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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 270.

THE CENTRAL TRUST COMPANY OF NEW YORK, RECEIVER OF THE NEW YORK STATE LOAN AND TRUST COMPANY, APPELLANT,

vs.

THE FIRST NATIONAL BANK OF WYANDOTTE, KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1877.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Saturday, the twenty-third day of June, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first year.

WILLIAM H. BRADLEY,
Clerk.

In chancery.

FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
COOK COUNTY NATIONAL BANK OF CHICAGO, A. H. Burley, receiver of said Cook County National Bank, Herman B. Barclay, Charles H. Voorhies, New York State Loan and Trust Company, and the Central Trust Company of New York, receiver of said Loan and Trust Company.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the 2nd day of February, A. D. 1875,
2 came the said complainant, by its solicitors, Messrs. Sleeper and Whiton, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, its bond for costs, and at the same time filed its bill of complaint in said entitled cause, which said bond for costs and bill of complaint are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, Dec. term, A. D. 1875. In equity.

FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
COOK COUNTY NATIONAL BANK ET AL.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against our property for any costs taxed against it. Dated this 2nd day of Feb'y, A. D. 1875.

SLEEPER AND WHITON.

(Endorsed:) Filed Feb'y 2nd, A. D. 1875. Wm. H. Bradley, clerk.

REC. 270—1

3 *Bill of complaint.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the circuit court of the United States for the northern district of Illinois.

To the judges of the circuit court of the United States for the northern district of Illinois:

The First National Bank of Wyandotte, Kansas, a banking corporation duly organized under the laws of the United States, and having its principal office and place of business at Wyandotte, in the State of Kansas, brings this its bill against the Cook County National Bank of Chicago, a banking corporation, duly organized under the laws of the United States, and having its principal office and place of business at Chicago, in said district, and against Herman B. Barclay and Charles H. Voohies, who are citizens of the State of Illinois, and who do business as partners under the name and style of Barclay, Voorhies and Co., and the New York Loan and Trust Company, a corporation alleged to exist under the laws of the State of New York, and to have its principal office and place of business in the city of New York.

And thereupon your orator complains and says that on or about the 24th day of September, A. D. 1874, your orator, by B. Judd, its cashier, made its promissory note for the sum of five thousand dollars, payable in four months after the date thereof to the order of the said
4 Cook County National Bank, which was secured (as mentioned on the face of said note) by the deposit of the bonds hereinafter described, and was on or about the date last aforesaid discounted by the said Cook County National Bank for your orator at the rate of eight per cent. per annum, upon the understanding that your orator in the conduct of its banking business would keep its Chicago account with said Cook County National Bank, and would allow of the proceeds of said discount at least the sum of four thousand dollars to remain as a permanent deposit in said Cook County National Bank until said note should mature. And as collateral security for the payment of such note your orator, as expressed on the face of such note, left with the said Cook County National Bank said Wyandotte City municipal bonds, bearing interest at the rate of per cent., and amounting at their par value to the sum of three thousand dollars, and numbered . Also Wyandott county bonds being the corporate bonds of the county of Wyandott, in the State of Kansas, bearing interest at the rate of per cent., and amounting at their par value to the sum of three thousand dollars, and numbered .

And your orator further shows that when the said note fell due on the 27th day of January, A. D. 1875, and down to the present time
5 your orator has allowed four thousand dollars of said discount to remain in said Cook County National Bank, in accordance with said understanding, but after said discount and prior to the maturity of said note the said Cook County National Bank failed and became utterly insolvent, having in its possession not only the said sum of $4,000, part proceeds of said discount as aforesaid, but also the further sum of $868.00, deposited by your orator with it in the course of its banking transactions in pursuance of said understanding, so that an additional sum of only $132.00 would have sufficed to pay said note of $5,000 on its maturity. But your orator is informed and believes that after said

Cook County National Bank became pressed for money to meet its current drafts on the defendant The New York Loan and Trust Company, it hypothecated or pledged in some manner with it your orator's said note of $5,000 a short time before the maturity thereof (at what precise time your orator cannot ascertain), but the said Cook County National Bank retained and still retains in its vaults the said Wyandott City and the said Wyandott County bonds, and the said New York Loan and Trust Company has forwarded the said note of $5,000 to the said Barclay, Voorhies and Co., in Chicago, their place of business, who are now in the actual possession of the same as agents of the said New York
6 Loan and Trust Company, and threaten to enforce collection of the same from your orator on the alleged account of the said New York Loan and Trust Company, or to send said note out of the jurisdiction of this court to said New York Loan and Trust Company, unless they shall be restrained from such course by the order of this court.

And your orator shows that the act of the said Cook County National Bank was, in so pledging such note of $5,000, a fraud upon your orator which, if not intercepted by this court, would result in your orator's being deprived of its right of set off as against such note, and losing the whole or, at least, a very considerable part of the said sum of $4,868.00, now standing to its credit on the books of the said Cook County National Bank.

And your orator has since the maturity of such note applied in a friendly way to the said Cook County National Bank for a return of the said bonds left as collateral as aforesaid, offering at the same time to pay the said balance of $132 to the said Cook County National Bank, or its assigns, but the said Cook County National Bank or those having charge of its affairs neglect or refuse so to do, sometimes pretending that they are unable to open the vault in said Cook County National Bank containing the same and setting up a variety of other unfounded pretences.

7 And your orator alleges upon information and belief that the said New York Loan and Trust Company is not a bona fide holder of said $5,000 note of your orator for value, but merely received the same as a collateral security for overdrafts or other indebtedness of the said Cook County National Bank to it, and the said Cook County National Bank, and said Barclay, Voorhies and Co. are, as your orator believes, aiding and abetting the said New York Loan and Trust Company in an endeavour to compel your orator to pay said note and so deprive it of its right to set off against said note its said deposit of $4,868.00 in the said Cook County National Bank, and in a fair, just, and equitable manner settle all the dealings of your orator with said Cook County National Bank.

And your orator had well hoped that the said defendants, and each of them, would have consented that said Cook County National Bank should accept the said balance of $132 and then apply the said deposit of $4,868.00 in satisfaction of the balance due on said note of $5,000, and would also have surrendered the said city and county bonds to your orator as in right and justice ought to be done; but now so it is, may it please your honors, that the defendants, combining and confederating together with divers persons besides, but to your orator unknown,
8 but whose names, when discovered, your orator prays may be inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your orator in the premises, neglect and refuse so to do, and set up a variety of unfounded excuses for such conduct, all which actings, doings, and pretences are contrary to

equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless by the strict rule of the common law—

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may without oath, their answer on oath being hereby expressly waived, according to best of their several knowledge, information, and belief, full, true, direct, and perfect answers make to all and singular the matters aforesaid; and that the said Cook County National Bank may be restrained by the order of this court, and also its agents, servants, attorneys, and assigns, from parting with the possession of said city and said county bonds, or in any manner selling, assigning, or disposing of the same, or any part thereof, until the further order of this court, and that the said Barclay, Voorhies and Co., their agents, servants, and
9 attorneys, may be restrained from parting with the actual custody of the said note of your orator for $5,000, and from sending the same beyond the jurisdiction of this court to the said New York Loan and Trust Company, or any other party whatsoever, and that the said Barclay, Voorhies & Co., and the said New York Loan and Trust Company, their agents, servants, attorneys, and assigns, may be restrained from bringing any suits in this district or elsewhere to enforce the collection of said note of $5,000 from your orator, and that upon the final decree of this court such restraining order may be made perpetual, and that the said Cook County National Bank, its agents, servants, attorneys, and assigns, may be compelled to surrender to your orator the said city and the said county bonds, and that the said defendants, and each and all of them, may be compelled to deliver over to your orator the said note of $5,000 upon your orator paying to such of said defendants as may seem entitled thereto the balance of $132.00 necessary to pay in full the said note of $5,000, after crediting thereon the said sum so remaining on deposit to the credit of your orator in the said Cook County National Bank, which balance of $132 your orator is ready and willing, and here offers to pay to such party as this court may hold to be entitled to the same, and that all matters in difference between the
10 parties to this suit, or any of them, may be fully and fairly adjusted and settled, and that your orator may have such other or further relief in the premises as may seem meet and agreeable to equity and good conscience—

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court to be directed to the said defendants, and each of them, and to their counsellors, attorneys, solicitors, trustees, and agents, therein and thereby commanding them, and each of them, and enjoining them, and each of them, in manner aforesaid.

And may it please your honors to grant unto your orator a writ of summons issuing out of and under the seal of this court to be directed to the said Cook County National Bank, the said New York Loan and Trust Company, the said Herman B. Barclay and the said Charles H. Voorhies, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court, then and there to answer all and singular the premises, and to stand by, abide, and perform all such orders and decrees therein as to your honors shall

seem meet and agreeable to equity and good conscience; and
11 your orator will ever pray, &c.

FIRST NATIONAL BANK OF WYANDOTTE, KANSAS,
By WM. E. CHAMBERLIN.

SLEEPER AND WHITON,
Sol'rs of Pl'ff.

G. A. TALLEY,
Of Counsel.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

William E. Chamberlain, being duly sworn, says: That he is a stockholder in, and the agent in Chicago of, the First National Bank of Wyandott, Kansas, the complainant in the above bill; that no one of the officers of said complainant is within this district, as he verily believes; that he has heard read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon information or belief, and as to those matters that he believes it to be true.

WM. G. CHAMBERLIN.

Subscribed and sworn to before me this 2nd day of February, A. D. 1875.

E. A. DRUMMOND,
U. S. Com.

(Endorsed:) Filed Feb'y 2d, 1875. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 2nd day of February, A. D.
12 1875, a writ of subpœna issued out of said clerk's office to said defendant in said entitled cause, which said writ, together with the memorandum, notice, and return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the Cook County National Bank of Chicago, The New York Loan and Trust Company, Herman B. Barclay, and Charles H. Voorhies, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of March next, to answer the bill of complaint of the First National Bank of Wyandott, Kansas, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute:

Witness the Hon. Morrison R. Waite, Chief Justice of the Su-
13 preme Court of the United States of America at Chicago aforesaid, this second day of February, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the 99th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Circuit court of the United States of America, northern district of Illinois, ss:

FIRST NATIONAL BANK OF WYANDOTT, KANSAS,
vs.
COOK COUNTY NATIONAL BANK OF CHICAGO, et al.

In chancery, December term, A. D. 1874.

To each of the defendants in the above cause:

Take notice that the complainant will move this honorable
14 court on the 1st Monday of March, A. D. 1875, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendants in accordance with the prayer of the bill herein.

Dated this 2nd day of Feb'y, A. D. 1875.

Yours, &c.,

SLEEPER & WHITON,
Compl't's Solicitors.

I have served the within writ in the following manner, to wit, upon Cook County National Bank therein named on the 3rd day of Feb., A. D. 1875, also by delivering a true copy of this to the cashier of said Cook County Bank; upon Herman B. Barclay therein named on the 3rd day of February, A. D. 1875; also upon Charles H. Voorhies therein named on the 3d day of February, A. D. 1875, by personally delivering to each of them a true copy of the same on the aforesaid days. I did not serve the New York Loan and Trust Company, the other defendant, having been unable to find it or either of its officers within my district.

B. H. CAMPBELL,
U. S. Marshal,
By I. N. BUCK, *Deputy.*

(Endorsed:) Filed Feb'y 16th, A. D. 1875. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 13th day of February, A. D. 1875, in the record of the proceedings of said court in said entitled cause be-
15 fore the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

In chancery.

THE FIRST NATIONAL BANK OF WYANDOTT, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF CHICAGO et al.

Now comes the complainant, by its solicitors, and on their motion

leave is given complainant to amend its bill of complaint herein by making Augustus H. Burley, receiver of the Cook County National Bank of Chicago, a party defendant herein.

And on the same day, to wit, the 13th day of February, A. D. 1875, said complainant, by its solicitors, filed in said clerk's office its amendments to its said bill of complaint in said entitled cause, which said amendments are in the words and figures following, to wit:

Amendments to bill of complaint.

Circuit court United States, N. D. Ills. In chancery.

FIRST NATIONAL BANK OF WYANDOTT, KANSAS, *v.* THE COOK COUNTY NATIONAL BANK ET AL.

Amendments to bill.

After the words "New York" in the 3rd line of the 2nd page
16 of said bill insert the words "and A. H. Burley as receiver of the property, effects, and assets of the said Cook County National Bank, said Burley being a citizen of the State of Illinois."

At the top of the 7th page of said bill insert the words "And your orator further shows that one A. H. Burley has, as it is informed and verily believes, been appointed by competent authority in the Treasury Department of the United States the receiver of all the property, effects, and assetts of the said Cook County National Bank in pursuance of the laws of the United States relating to national banks."

Before the last line on the 10th page of said bill in the prayer for process insert the words "And A. H. Burley as receiver of the property, effects, and assetts of the Cook County National Bank aforesaid."

Feb'y 13, 1875.

SLEEPER AND WHITON,
Sol's for Compl't.

(Endorsed:) Filed Feb'y 13, 1875. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 27th day of February, A. D. 1875, said defendant, The New York State Loan and Trust Company, by its solicitors, filed in said clerk's office its answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of New York State Loan and Trust Company.

17 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the circuit court of the United States for the northern district of Illinois.

The separate answer of the New York State Loan and Trust Company sued by the name of the New York Loan and Trust Company, one of the defendants to the bill of complaint of The First National Bank of Wyandott, Kansas, complainant.

This defendant, saving and reserving unto itself all and all manner of

advantage of exception that can or may be had or taken to said bill for the many errors, uncertainties, and insufficiencies therein contained, for answer thereto, or to so much thereof as this defendant is advised is material for it to answer, says that it admits that on or about September 24th, A. D. 1874, the said complainant in the manner stated in said bill made its promissory note for the sum of five thousand dollars, payable in four months after the date thereof to the order of the said Cook County National Bank, which was secured by the deposit of the bonds mentioned in said bill, and that said note was on or about the 24th day of September, A. D. 1874, discounted by said Cook County National Bank for said complainant, and this defendant avers that said note was then and there delivered to said Cook County National Bank by said complainant, but this defendant does not know, except from information, at what rate the said note was discounted by said Cook
18 County National Bank, nor did this defendant have any notice or information at the time it purchased the said note as hereinafter stated as to the rate at which said note was so discounted.

And this defendant states that at the time it purchased the said note as hereinafter stated it had no notice, information, or knowledge of the alleged understanding that complainant in the conduct of its banking business would keep its Chicago account with said Cook County National Bank and would allow of the proceeds of said discount at least the sum of four thousand dollars to remain as a permanent deposit in said Cook County National Bank until said note should mature, nor does it now know of any such understanding, except upon information; and it demands proof of the same.

Nor does this defendant know whether said complainant allowed said sum of $4,000.00 to remain in said Cook County National Bank any part of the time as alleged in said bill of complaint. But it admits that after the said discount and prior to the maturity of said note the said Cook County National Bank failed and became insolvent, though this defendant does not know whether at the time of its said failure the said Cook County National Bank had in its possession the said sum of
19 $4,000.00 of said discount or the further sum of $868.00 deposited by complainant, or any part of either of said sums.

This defendant denies that said Cook County National Bank ever hypothecated or pledged in any manner to this defenda t the said note of $5,000.00, but defendant states that on the seventh day of October, 1874, or thereabouts, the said Cook County National Bank sold, assigned, transferred, and delivered to this defendant the said note for the sum of $4,886\frac{25}{100}$, which last named sum was in good faith paid by this defendant to said Cook County National Bank for the said note; that said note was not received as a pledge for the security of any pre existing indebtedness of said Cook County National Bank to this defendant, but this defendant in good faith and for a fair cash value purchased the said note at the time last aforesaid and before the maturity of said note, and said note was then and there endorsed by said Cook County National Bank by B. F. Allen, the president thereof, and acting in behalf of said bank, and this defendant alleges that it received said note in the usual course of business and without any notice or information of any offset, counterclaim, or defence thereto in favor of said complainant, and without any notice or information of the understanding and arrangement alleged in said bill to have been made between said complainant and said
20 Cook County National Bank at the time of the said discount by the bank last named.

This defendant admits that said bonds which were deposited as se-

curity for said note as stated in said bill are still in the vaults of said Cook County National Bank, but it alleges that it is justly and equitably entitled to said bonds and to the possession thereof to be held as security for the payment of said note of $5,000.00.

Defendant further admits that it has forwarded the said note of $5,000.00 to said firm of Barclay, Voorhies and Co. in Chicago, and that said firm is now in the actual possession of said note as agent of this defendant, but it denies that the acts of said Cook County National Bank in transferring said note to this defendant was a fraud upon said complainant, and this defendant states upon the contrary that the same was sold and assigned to this defendant in good faith and for a valuable consideration and in the usual and ordinary course of business, and this defendant paid the consideration for said note in the manner following, that is to say: The amount paid by this defendant for said notes was placed to the credit of the Cook County National Bank on the books of this defendant, and the same was all drawn out before the maturity of said note by the drafts of said Cook County National Bank, which drafts were duly paid by this defendant before the maturity of said note
21 and as the same were presented.

Defendant says that it does not know except from the statements in said bill whether said complainant ever applied to said Cook County National Bank for a return of said bonds or offered to pay the said sum of $132.00 to said Cook County National Bank, nor does defendant know what reasons were given by said bank for refusing to deliver said bonds to said complainant, and therefore this defendant leaves said complainant to make proof of said matters if the same shall be deemed material; and this defendant says that said complainant has not in and by its said bill made or stated such a case as doth or ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant or any of said defendants, and this defendant hopes it shall have the same benefit thereof as if it had demurred to said complainant's bill. And this defendant having now fully answered the matters and things in said bill set forth and having caused its corporate seal to be hereto affixed and having caused its secretary to subscribe his name hereto, prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

H. J. HUBBARD,
Sec'ty N. Y. State Loan & Trust Co'y, Def't.

COOPER, GARNETT and PACKARD,
Solicitors and of Counsel.

22 STATE OF NEW YORK,
City and County of New York, ss:

Henry J. Hubbard, being first duly sworn, states on oath that he is the secretary of the New York State Loan and Trust Company, the defendant named in the foregoing answer, and affiant states that he has heard read the said answer and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

H. J. HUBBARD.

Subscribed and sworn to before me this 25th day of February, 1875.
[SEAL.] GEO. W. PINCKNEY,
Notary Public, N. Y. & Kings Co.

(Endorsed:) Filed Feb'y 27, 1875. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 27th day of February, A. D. 1875, said defendants, Herman B. Barclay and Charles H. Voorhies, filed in said clerk's office their joint and several answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Herman B. Barclay et al.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

23 In the circuit court of the United States for the northern district of Illinois.

The joint and several answer of Herman B. Barclay and Charles H. Voorhies, two of the defendants, to the bill of complaint of the First National Bank of Wyandott, Kansas, complainant.

These defendants answering said bill say they admit they are citizens of the State of Illinois, and are carrying on business as partners under the firm name of Barclay, Voorhies and Co., but they say that they are only interested in the matter in controversy in this suit as the agent of said defendant, The New York State Loan and Trust Company; that the defendant last named did send said note of $5,000.00 to these defendants for collection, and that the same is now in the hands of these defendants as such agents.

These defendants say that they have no knowledge of any of the other matters set forth in said bill of complaint, but they are informed and believe that the said note was purchased by said New York State Loan and Trust Company of the said Cook County National Bank for a valuable consideration in the usual and ordinary course of business in good faith and without any notice whatever of any offset, counterclaim, or right of deduction or credit in favor of said complainant. But these defendants say that they are advised and believe that it makes no
24 difference whether the said note was assigned to said New York State Loan and Trust Company absolutely and for a valuable consideration aforesaid or merely as collateral security for a pre existing indebtedness, as in either case the said New York State Loan and Trust Company is entitled to said note and the said bonds to secure the same free from the claim of said complainant; and these defendants hope they shall have the same benefit of this defence as if they had demurred to the said complainant's bill.

And having now fully answered said bill these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

HERMAN B. BARCLAY.
CHARLES H. VOORHIES.

COOPER, GARNETT and PACKARD,
Sol'rs & of Counsel.

(Endorsed:) Filed Feb'y 27, 1875. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 3rd day of March, A. D. 1875, said defendants, The Cook County National Bank and A. H. Burley, receiver of the Cook County National Bank, by their solicitors, filed in said clerk's office their joint and several answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Cook County National Bank and A. H. Burley, receiver, &c.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In chancery.

THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF CHICAGO, Herman B. Barclay, Charles H. Voorhies, The New York Loan and Trust Company, and A. H. Burley, receiver of the Cook County National Bank of Chicago.

The joint and several answer of The Cook County National Bank of Chicago, and A. H. Burley, receiver of the Cook County National Bank of Chicago, two of the defendants to the bill of complaint (as amended) of the First National Bank of Wyandotte, Kansas, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised is or are material or necessary for them, or any of them, to make answer unto, they, these defendants, severally answering, say:

26 That they admit that, on or about the 24th day of September, A. D. 1874, the complainant did make and deliver to the defendant, The Cook County National Bank, its (the complainant's) promissory note for the sum of $5,000.00, payable in four months after said date, and which note said The Cook County National Bank did then and there discount for complainant, paying to complainant the sum of $1,000, and crediting complainant with the balance of said $5,000, less the agreed discount, and as collateral to said note the complainant did deposit with The Cook County National Bank certain Wyandotte City municipal and county bonds, which are substantially described in said bill of complaint.

They admit that after said discount and prior to the maturity of said note The Cook County National Bank failed, but deny that it became utterly insolvent; and they admit that at the time of such failure said Cook County National Bank owed to the complainant the sum of $4,868 $\frac{78}{100}$.

They deny that after said Cook County National Bank became pressed for money to meet its current drafts on the defendant, The New York Loan and Trust Company, it hypothecated or pledged in any manner the said note to said last-named defendant, but assert the truth to be

27 that before the maturity of said note, and before the failure of The Cook County National Bank, it sold, assigned, and delivered said note to said defendant, The New York Loan and Trust Company, for its face value less the usual discount, and said The New York Loan and Trust Company then and there paid The Cook County National Bank such consideration therefor, and that said The New York

Loan and Trust Company is a bona-fide purchaser of said note for value before maturity and without notice.

They admit that said Wyandotte City and County bonds are still in the hands of these defendants.

They deny that at any time or in any place the complainant, by its agents or otherwise, applied to these defendants, or either of them, for a return of said bonds, offering, at the same time, to pay said alleged balance of $132, or any other sum; and they deny the pretenses in said bill set forth relating thereto.

They say that the defendant, The Cook County National Bank, failed on the 18th day of January, A. D. 1875. They admit that the defendant, A. H. Burley, has been appointed by competent authority in the Treasury Department of the United States the receiver of all the property, effects, and assets of said The Cook County National Bank, in pursuance of the laws of the United States relating to national banks; and they assert that said Burley was so appointed receiver of the property,
28 assets, and effects of The Cook County National Bank on the 1st day of February, A. D. 1875, and that by virtue of such appointment and as such receiver said Burley did, on the 8th day of February, A. D. 1875, take possession (and still retains possession) of all the property, assets, and effects of said The Cook County National Bank.

And these defendants, further answering, say that they deny each and every allegation in said bill of complaint contained, except such as have heremibefore been specifically admitted or denied.

And these defendants, further answering, deny that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to said bill of complaint, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE COOK COUNTY NATIONAL BANK.
A. H. BURLEY,
Receiver of the Cook County National Bank.
By MONROE, BISBEE & BALL,
Their Solicitors.

HENRY S. MONROE,
Of Counsel.

(Endorsed:) Filed March 3rd, 1875. Wm. H. Bradley, clerk.

29 Afterwards, to wit, on the 2d day of December, A. D. 1875, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry to wit:

In chancery.

THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF CHICAGO et al.

On motion leave is given the complainant to file an amended bill of complaint herein.

And on the same day, to wit, the 2d day of December, A. D. 1875,

said complainant, by its solicitors, filed in said clerk's office its amended bill of complaint in said entitled cause, which said amended bill is in the words and figures following, to wit:

Amended bill of complaint.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the circuit court of the United States for the northern district of Illinois.

To the judges of the circuit court of the United States for the northern district of Illinois:

The First National Bank of Wyandott, Kansas, a banking corporation duly organized under the laws of the United States and having its principal office and place of business at Wyandott, in the State
30 of Kansas, brings this its bill against The Cook County National Bank of Chicago, a banking corporation duly organized under the laws of the United States and having its principal office and place of business at Chicago, in said district, and against Thomas B. Barclay and Charles B. Voorhies, who are citizens of the State of Illinois, and who do business as partners under the name and style of Barclay, Voorhies and Co., and The New York State Loan and Trust Company, a corporation alleged to exist under the laws of the State of New York, and to have its principal office and place of business in the city of New York, and A. H Burley as receiver of the property, assets, and effects of said Cook County National Bank, and thereupon your orator complains and says:

That on or about the 24th day of September, A. D. 1874, your orator, by B. Judd, its cashier, made its promissory note for the sum of five thousand dollars, payable in four months after the date thereof, to the order of the said Cook County National Bank, which was secured, as mentioned on the face of said note, by the deposit of the bonds hereinafter described, and was on or about the date last aforesaid discounted by the said Cook County National Bank for your orator at the rate of eight per cent. per annum, upon the understanding that your orator in the con-
31 duct of its business would keep its Chicago account with said Cook County National Bank and would allow of the proceeds of said discount at least the sum of four thousand dollars to remain as a permanent deposit in said Cook County National Bank until said notes should mature. And as collateral security for the payment of such note your orator, as expressed on the face of such note, left with the said Cook County National Bank said Wyandott City municipal bonds, bearing interest at the rate of per cent. and amounting at their par value to the sum of three thousand dollars, and numbered also Wyandott County bonds, being the corporate bonds of the county of Wyandott, in the State of Kansas, bearing interest at the rate of per cent., and amounting at their par value to the sum of three thousand dollars and numbered.

And your orator further shows that when the said note fell due on the 27th day of January, A. D. 1875, it had allowed, and down to the present time your orator has allowed four thousand dollars of said discount to remain in said Cook County National Bank, in accordance with said understanding, but after said discount, and prior to the maturity of said note the said Cook County National Bank had failed and became

32 utterly insolvent, having in its possession not only the said sum of $4,000.00, part proceeds of said discount as aforesaid, but also the further sum of $868.00 deposited by your orator with it in the course of its banking transactions in pursuance of said understanding, so that an additional sum of only $132.00 would have sufficed to pay said note of $5,000.00 on its maturity. But your orator is informed and believes that after said Cook County National Bank became pressed for money to meet its current drafts on the defendant, the New York State Loan and Trust Company, it hypothecated or pledged in some manner with it your orator's said note of $5,000.00 a short time before the maturity thereof, at what precise time your orator cannot ascertain, but the said Cook County National Bank retained and still retains in its vaults the said Wyandott City and the said Wyandott County bonds, and the said New York State Loan and Trust Company has forwarded the said note of $5,000.00 to the said Barclay, Voorhies and Co., in Chicago, their place of business, who are now in the actual possession of the same as agents of the said New York State Loan and Trust Company, and threatens to enforce collection of the same from your orator on the alleged account of the said New York State Loan and Trust Company or to
33 send said note out of the jurisdiction of this court to said New York State Loan and Trust Company unless they shall be restrained from such course by the order of this court.

And your orator shows that said note so made by your orator was never designed for rediscount or negotiation, but simply as a memorandum of the arrangement between your orator and said Cook County National Bank above set forth, and the act of the said Cook County National Bank in so pledging or negotiating such note of $5,000.00 was a fraud upon your orator, which if not intercepted by this court would result in your orator's being deprived of its right of set-off as against such note, and losing the whole, or at least a very considerable part, of the said sum of $4,868.00, now standing to its credit on the books of the said Cook County National Bank.

And your orator shows that at the time of the making and delivery of the said note, it was not in any manner indebted to the said Cook County National Bank, nor was the indebtedness assumed upon such note incurred for any of the objects permitted by sections 5202 and 5203 of the Revised Statutes of the United States, nor did your orator intend to violate the provisions of section 5183 of said Revised Statutes as
34 amended, but expected that said note would merely be a memorandum of the arrangement between your orator and said Cook County National Bank for the conduct of their private business between themselves, and your orator charges that the said New York State Loan and Trust Company, in accepting said note from said Cook County National Bank, was by the recitals upon the face of said note as well as by the provisions of law regulating the transactions of national banks, put upon enquiry and bound to ascertain whether your orator had a valid defence to the whole or any part of said note, and whether your orator had power to execute a post note which might be rediscounted before maturity, free from equities between the original parties thereto.

Your orator further charges upon information and belief that some of the officers of said Cook County National Bank were also officers of said New York State Loan and Trust Company, and particularly that one Chauncey T. Bowen had had an interest in both the defendant corporations about the time said note of your orator was delivered to said company, and was an active officer or manager or agent of both the said Cook County National Bank, and said company well knew that said note

of your orator was not intended for negotiations and that your orator had a set-off thereto.

35 And your orator further charges upon information and belief that when said company received the said note from said Cook County National Bank, it well knew that such bank was in an embarrassed condition, having been for a long time one of its New York correspondents and depositaries; but without enquiry took not only your orator's said note, but at or about the same time a large amount of the other assets of said Cook County National Bank, to indemnify itself for overdrafts of the said Cook County National Bank.

And your orator further shows that the said A. H. Burley has been duly appointed, by competent authority from the Treasury Department of the United States, the receiver of all the property, assets, and effects of the said Cook County National Bank, in pursuance of the laws of the United States relating to insolvent national banks.

And your orator has, since the maturity of said note, applied in a friendly manner to the said Cook County National Bank and the said receiver for a return of the said bonds left as collateral as aforesaid, offering at the same time to pay the said balance of $132 to the said receiver of the said Cook County National Bank or its or his proper

36 assignee, but the said receiver and the said company neglect and refuse so to do, at the same time pretending that they are unable to open the vaults in said Cook County National Bank containing the same, and setting up a variety of other unfounded pretences.

And your orator alleges, upon information and belief, that the said New York State Loan and Trust Company is not a bona-fide holder of said $5,000 note of your orator for value, but merely received the same as a collateral security for overdrafts or other indebtedness of the said Cook County National Bank to it, and the said Cook County National Bank and said Barclay, Voorhies and Co., and the said receiver, as your orator believes, are aiding and abetting the said New York State Loan and Trust Company in an endeavour to compel your orator to pay said note, and to deprive it of its right to set off against said note its said deposit of $4,868.00 in the said Cook County National Bank, and in a fair, just, and equitable manner settle all the dealings of your orator with said Cook County National Bank.

And your orator had well hoped that the said defendants, and each of them, would have consented that said Cook County National Bank, or its said receiver, or said company, would accept the said balance of

37 $132, and then apply the said deposit of $4,868.00 in satisfaction of the balance due on said note of $5,000, and would also have surrendered the said city and county bonds to your orator, as in right and justice ought to be done; but now so it is, may it please your honors, that the defendants, combining and confederating together with divers persons besides, but to your orator unknown, but whose name' when discovered, your orator prays may be inserted herein, with proper and apt words to charge them, and contriving how to injure and defraud your orator in the premises, neglect so to do, and set up a variety of unfounded excuses for such conduct; all which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless by the strict rules of the common law—

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein and hereby prayed,

and may, without oath (their answer on oath being hereby expressly waived), according to the best of their several knowledge, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that the said Cook County National Bank and its said receiver may be restrained by the order of this court, and also their agents, servants, attorneys, and assigns, from parting
38 with the possession of said city and said county bonds, or in any manner selling, assigning, or disposing of the same, or any part thereof, until the further order of this court; and that the said Barclay Voorhies and Co., their agents and attorneys, may be restrained from parting with the actual custody of the said note of your orator for $5,000 and from sending the same beyond the jurisdiction of this court to the said New York State Loan and Trust Company, or any other party whatever, and that the said Barclay, Voorhies and Co. and the said New York State Loan and Trust Company, their agents, servants, attorneys, and assigns, may be restrained from bringing any suits in this district, or elsewhere, to enforce the collection of said note of $5,000 from your orator, and that upon the final decree of this court such restraining order may be made perpetual, and that the said Cook County National Bank and its said receiver, and his agents, servants, attorneys and assigns may be compelled to surrender to your orator the said city and the said county bonds, and that the said defendants, and each and all of them, may be compelled to deliver over to your orator the said note of $5,000 upon your orator paying to such of said defendants as may seem entitled thereto the balance of $132.00 necessary to pay in full the said note of $5,000.00 after crediting thereon the said sum so re-
39 maining on deposit to the credit of your orator in said Cook County National Bank, which balance of $132.00, or any further sum that may be equitable, your orator is ready and willing and here offers to pay to such party as this court may hold to be entitled to the same, and that all matters in difference between the parties to this suit, or any of them, may be fully and fairly adjusted and settled, and that your orator may have such other or further relief in the premises as may seem meet and agreeable to equity and good conscience.

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said defendants, and each of them, and to their counsellors, attorneys, solicitors, parties, and agents therein, and thereby commanding them and each of them, and enjoining them and each of them, in manner aforesaid.

And may it please your honors to grant unto your orator a writ of summons issuing out of and under the seal of this court, and directed to the said Cook County National Bank, the said New York State Loan and Trust Company, the said Herman B. Barclay, and the said Charles H. Voorhies, also said A. H. Burley, receiver of the said Cook County National Bank, therein and thereby commanding them, and each
40 of them, on a certain day, and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court then and there to answer all and singular the premises, and to stand by, abide, and perform all such orders and decrees therein

as to your honors shall seem meet and agreeable to equity and good conscience. And your orator will ev r pray, &c.

FIRST NATIONAL BANK OF WYANDOTT, KANSAS,
By W. E. CHAMBERLAIN.

SLEEPER AND WHITON,
Sol'rs for Pl'ff.

G. A. TALLEY.
Of Counsel.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Wm. E. Chamberlain, being duly sworn, says that he is a stockholder in and the agent in Chicago of the First National Bank of Wyandott, Kansas, the complainant in the above bill; that no one of the officers of the said complainant is within this district, as he verily believes; that he has heard read the foregoing bill, knows the contents thereof, and that the same is true, except as to the matters therein stated on information or belief; and as to these matters, that he believes it to be true.

WM. E. CHAMBERLAIN.

Subscribed and sworn to before me this 29th day of November, 1875.
[SEAL.] J. A. SLEEPER,
Notary Public.

41 (Endorsed:) Filed Dec. 2d, 1875. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 11th day of December, A. D. 1875, said defendant, the New York State Loan and Trust Company, by its solicitors, filed in said clerk's office its answer to the amended bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of the New York State Loan and Trust Company to the amended bill of complaint.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

To the circuit court of the United States for the northern district of Illinois:

The separate answer of the New York State Loan and Trust Company, sued by the name of the New York State Loan and Trust Company, one of the defendants to the amended bill of complaint of the First National Bank of Wyandott, Kansas, complainant.

This defendant, saving and reserving unto itself all and all manner of advantage of exception that can or may be had or taken to said bill for the many errors, uncertainties, and insufficiencies therein contained, for answer thereto, or to so much thereof as this defendant is advised is material for it to answer, says that it admits that on or about September 24th, A. D. 1874, the said complainant, in the manner stated in
42 said bill, made its promissory note for the sum of five thousand dollars, payable in four months after the date thereof to the order of the said Cook County National Bank, which was secured by the deposit of the bonds mentioned in said bill, and that said note was on or about the 24th day of September, A. D. 1874, discounted by said Cook County National Bank for said complainant, and this defendant avers that said note was then and there delivered to said Cook County National Bank

by said complainant, but this defendant does not know, except from information, at what rate the said note was discounted by said Cook County National Bank, nor did this defendant have any notice or information at and before the time it purchased the said note as hereinafter stated; it had no notice, information, or knowledge of the alleged understanding that complainant in the conduct of its banking business would keep its Chicago account with said Cook County National Bank, and would allow of the proceeds of said discount at least the sum of four thousand dollars to remain as a permanent deposit in said Cook County National Bank until said note should mature, nor does it now know of any such understanding except from information, and it demands proof of the same; nor does this defendant know whether said complainant
43 allowed said sum of $4,000.00 to remain in said Cook County National Bank any part of the time as alleged in said bill of complaint, but it admits that after the said discount, and prior to the maturity of said note, the said Cook County National Bank failed and became insolvent, though this defendant does not know whether at the time of its said failure the said Cook County National Bank had in its possession the said sum of $4,000.00 of said discount, or the further sum of $868.00 deposited by complainant, or any part of either of said sums. This defendant denies that said Cook County National Bank ever hypothecated, or pledged in any manner, to this defendant the said note of $5,000.00, but defendant states that on the seventh day of October, 1874, or thereabouts, the said Cook County National Bank sold, assigned, transfer'ed, and delivered to this defendant the said note for the sum of $4,886.25, which last named sum was in good faith paid by this defendant to said Cook County National Bank for the said note; that said note was not received as a pledge for the security of any pre existing indebtedness of said Cook County National Bank to this defendant, but this defendant, in good faith and for a fair cash value, purchased the said note at the time last aforesaid, and before the maturity of said note; and
44 said note was then and there endorsed by said Cook County National Bank, by B. F. Allen, the president thereof, and acting in behalf of said bank; and this defendant alleges that it received said note in the usual course of business, and without any notice or information of any off-set, counter-claim, or defence thereto, in favor of said complainant, and without any notice or information of the understanding and arrangement alleged in said bill to have been made between said complainant and said Cook County National Bank at the time of the said discount by the bank last named.

This defendant admits that said bonds which were deposited as security for said note, as stated in said bill, are still in the vaults of said Cook County National Bank, but it alleges that it is justly and equitably entitled to said bonds and to the possession thereof, to be held as security for the payment of said note of $5,000.00.

Defendant further admits that it has forwarded the said note of $5,000.00 to said firm of Barclay, Voorhies and Co., in Chicago, and that said firm is now in actual possession of said notes as agent of this defendant; but it denies that the act of said Cook County National Bank in transferring said note to this defendant was a fraud upon said
45 complainant, and this defendant states, upon the contrary, that the same was sold and assigned to this defendant in good faith and for a valuable consideration, and in the usual and ordinary course of business, and this defendant paid the consideration for said note in the manner following, that is to say, the amount paid by this defendant for said note was placed to the credit of the Cook County National Bank

on the books of this defendant, and the same was all drawn out before the maturity of said note by the drafts of said Cook County National Bank, which drafts were duly paid by this defendant before the maturity of said note and as the same were presented.

Defendant says it has no knowledge or information, except from said bill and amended bill, whether said complainant or said Cook County National Bank designed said note for rediscount or negotiation, and therefore leaves complainant to the proof of the same if it shall be deemed material; nor did this defendant, at or before its said purchase of said note, have any notice of the designs or intentions of said complainant or said Cook County National Bank in that respect, nor does this defendant know whether said complainant at the time of making and delivering said note was indebted unto said Cook County National Bank; nor whether the indebtedness incurred by the making of
46 said note was for any of the objects specifically named in sections 5202 and 5203 of the Revised Statutes of the United States, but defendant avers that the said sections do not nor do either of them prohibit the national banks organized under the law of Congress from incurring indebtedness other than such as named in said two sections, until the indebtedness exceeds the amount of the capital stock at such time actually paid in and remaining undiminished by losses or otherwise; and defendant alleges that there is nothing in said bill or amended bill to show that at the time of the execution and delivery of said note the indebtedness of said complainant exceeded the amount of its capital stock at that time actually paid in and then remaining undiminished by losses or otherwise.

This defendant says it has no knowledge except from said amended bill whether complainant intended to violate the provisions of section 5183 of said Revised Statutes, nor whether it expected said note would be merely a memorandum of the arrangement between complainant and said Cook County National Bank, as stated in said amended bill, but defendant says that in and by said amended bill the said complainant claims that the making and delivery of said note was an illegal transaction, and defendant says if the same was an illegal transaction
47 and a violation of the statutes of the United States, then a court of equity will not lend its assistance to any party to such transaction to relieve from the same or the results thereof; and this defendant denies that it was in anywise put on inquiry by the recitals on the face of said note, or by the provisions of law regulating the transactions of national banks, and it denies that it was under any obligation to ascertain whether complainant had a valid defence to the whole or any part of said note, or whether complainant had the power to execute a post note which might be rediscounted before maturity, free from equities between the original parties thereto, because the defendant says the law gave said complainant the power to execute such note and the same might be lawfully discounted and negotiated before the maturity thereof, free from all equities between the original parties thereto.

Defendant says that at the time of the execution and delivery of said note, and for a long time before then and ever since that time, none of the officers of the Cook County National Bank were or have been officers of this defendant, nor was Chauncey T. Bowen at the time or about the time of the delivery and sale of said note to this defendant an active or passive officer, manager or agent of said Cook County National
48 Bank, nor did this defendant know that said note was not intended for negotiation, nor that complainant had any set-off there-

to, nor did this defendant at that time know that said Cook County National Bank was in an embarrassed condition.

Defendant says that it does not know, except from the statements in said bill and amended bill, whether said complainant ever applied to said Cook County National Bank for a return of said bonds, or offered to pay the said sum of $132.00 to said Cook County National Bank. Nor does defendant know what reasons were given by said bank for refusing to deliver said bonds to said complainant, and therefore this defendant leaves said complainant to make proof of said matters if the same shall be deemed material, and this defendant says that said complainant has not in and by its said bill made or stated such a case as doth or ought to entitle it to any such relief as is thereby sought and prayed for, from or against this defendant or any of said defendants, and this defendant hopes it shall have the same benefit thereof as if it had demurred to said complainant's bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is charged by said amended bill,
49 without this, that there is any other matter, cause, or thing in said complainant's amended bill contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traverse l, and avoided, or denied, is true to the knowledge or belief of this defendant. And this defendant having now fully answered the matters and things in said bill set forth and having caused its corporate seal to be hereto affixed and having caused its secretary to subscribe his name hereto, prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

[SEAL.] NEW YORK STATE LOAN AND TRUST CO.,
By H. J. HUBBARD, *Sec't'y.*

COOPER, GARRETT AND PACKARD,
Sol'rs & of Counsel.

STATE OF NEW YORK,
City and County of New York, ss:

Henry J. Hubbard, being first duly sworn, states on oath that he is the secretary of the New York State Loan and Trust Company, the defendant named in the foregoing answer, and affiant states that he has heard the said answer read and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

H. J. HUBBARD.

50 Subscribed and sworn to before me this 3rd day of December, A. D. 1875.

[SEAL.] EDWIN L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

(Endorsed:) Filed Dec. 11, 1875. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 24th day of April, A. D. 1877, said complainant, by its solicitors, filed in said clerk's office its replication to the answer of the New York State Loan and Trust Company et al., which said replication is in the words and figures following, to wit:

Replication to answer of The New York State Loan and Trust Company, et al.

NORTHERN DISTRICT OF ILLINOIS,
Cook County, ss :

Circuit court of the U. S., northern dist., of Ill's, of the March term, A. D. 1877. In chancery.

THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NAT'L BANK, ET AL.

The replication of the said complainant to the answer of the New
51 York State Loan and Trust Company and others.

This repliant saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendant's for replication thereunto, saith that it does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill, it has already prayed.

SLEEPER AND WHITON,
Solicitor for Complainant.

(Endorsed :) Filed this 24th day of April A. D. 1877. Wm H. Bradley, clerk.

52 Afterwards, to wit, on the 23rd day of June, A. D. 1877, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge is the following entry, to wit :

In chancery.

FIRST NATIONAL BANK OF WYANDOTTE, KANSAS,
vs.
THE COOK COUNTY NATIONAL BANK ET AL.

Upon motion of complainant's solicitor, it is ordered that complainant have leave to make the Central Trust Company of New York receiver of the New York State Loan and Trust Company a party defendant to this suit.

On the same day, to wit, the 23rd day of June, A. D., 1877, said complainant by its solicitors filed in said clerk's office its amendment to its

amended bill of complaint in said entitled cause, which said amendment is in the words and figures following, to wit:

Amendment to Amended Bill of Complaint.

In circuit court of United States for northern district of Illinois. In chancery.

FIRST NATIONAL BANK OF WYANDOTTE, KANSAS, *vs.* THE COOK COUNTY NATIONAL BANK ET AL.

Amendment to amended bill.

53 On page 2 of the amended bill in line 3 between the word "bank" and the word "and" insert as follows: "The Central Trust Company, receiver of The New York State Loan and Trust Company."

On page 12 of said amended bill in line 22, between the word "bank" and the word "therein" insert as follows: "The Central Trust Company, receiver of The New York State Loan and Trust Company."

SLEEPER AND WHITON,
Compl't's Sol.

(Endorsed:) Filed June 23, 1877. Wm. H. Bradley, cl'k.

On the same day to wit, the 23rd day of June, A. D. 1877, the said defendant The Central Trust Company of New York, receiver, &c., filed in said clerk's office its answer to the amended bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Central Trust Company of New York to Amended Bill of Complaint.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the circuit court of the United States for the northern district of Illinois.

The separate answer of the Central Trust Company of New York, receiver of The New York State Loan and Trust Company, one of the defendants to the amended bill of complaint of the First National
54 Bank of Wyandotte, Kansas, complainant.

This defendant saving and reserving unto itself all and all manner of advantage of exception that can or may be had or taken to said bill for the many errors, uncertainties, and insufficiencies therein contained, for answer thereto, or to so much thereof as this defendant is advised is material for it to answer, says that it admits that on or about September 24th, A. D. 1874, the said complainant, in the manner stated in said bill, made its promissory note for the sum of five thousand dollars, payable in four months after the date thereof to the order of the said Cook County National Bank, which was secured by the deposit of the bonds mentioned in said bill, and that said note was on or about the 24 day of September, 1874, discounted by said Cook County National Bank for said complainant, and this defendant avers that said note was

then and there delivered to said Cook County National Bank by said complainant; but this defendant does not know, except from information, at what rate the said note was discounted by said Cook County National Bank, nor did said loan and trust company have any notice or information at or before the time it purchased the said note as hereinafter stated, of the alleged understanding that complainant, in the conduct of its banking business, would keep its Chicago account
55 with said Cook County National Bank, and would allow of the proceeds of said discount at least the sum of four thousand dollars to remain as a permanent deposit in said Cook County National Bank until said note should mature, nor does this defendant now know of any such understanding except from information, and it demands proof of the same. Nor does this defendant know whether said complainant allowed said sum of $4,000.00 to remain in said Cook County National Bank any part of the time as alleged in said bill of complaint, but it admits that after the said discount, and prior to the maturity of said note, the said Cook County National Bank failed and became insolvent, though this defendant does not know whether at the time of its said failure the said Cook County National Bank had in its possession the said sum of $4,000.00 of said discount, or the further sum of $868.00 deposited by complainant, or any part of either of said sums. This defendant denies that said Cook County National Bank ever hypothecated or pledged in any manner to said loan and trust company the said note of $5,000.00, but defendant states that on the 7th day of October, 1874, or thereabout, the said Cook County National Bank sold, assigned, transferred, and delivered to said loan and trust company the said note for the sum of $4,886, which sum last named was in
56 good faith paid by said loan and trust company to said Cook County National Bank for the said note; that said note was not received as a pledge for the security of any pre existing indebtedness of said Cook County National Bank to said loan and trust company, but said loan and trust company, in good faith and for a fair cash value, purchased the said note at the time last aforesaid and before the maturity of said note, and said note was then and there endorsed by said Cook County National Bank, by B. F. Allen, the president thereof, and acting in the behalf of said bank, and this defendant alleges that said loan and trust company received said note in the usual course of business, and without any notice or information of any offset, counter claim, or defence thereto in favor of said complainant, and without any notice or information of the understanding and arrangement alleged in said bill to have been made between said complainant and said Cook County National Bank at the time of the said discount by the bank last named.

This defendant admits that said bonds which were deposited as security for said note, as stated in said bill, are still in the vaults of said Cook County National Bank, but alleges that this defendant is
57 justly and equitably entitled to said bonds and to the possession thereof, to be held as security for the payment of said note of $5,000.00.

Defendant further admits that said loan and trust company has forwarded the said note of $5,000.00 to said firm of Barclay, Voorhies and Co., in Chicago, and that said firm is now in actual possession of said note as agent of this defendant, but denies that the act of said Cook County National Bank in transferring said note to said loan and trust company was a fraud upon said complainant, and this defendant states, upon the contrary, that the same was sold and assigned to said loan and trust company in good faith, and for a valuable consideration, and

in the usual and ordinary course of business, and said loan and trust company paid the consideration for said note in manner following, that is to say: the amount paid by said loan and trust company for said note was placed to the credit of the Cook County National Bank on the books of said loan and trust company, and the same was all drawn out before the maturity of said note by the drafts of said Cook County National Bank, which drafts were duly paid by said loan and trust company before the maturity of said note and as the same were presented.

58 Defendant says that it has no knowledge or information except from said bill and amended bill whether said complainant or said Cook County National Bank designed said note for rediscount or negotiation, and therefore leaves complainant to the proof of the same, if it shall be deemed material. Nor did said loan and trust company, at or before its said purchase of said note, have any notice of the designs or intentions of said complainant or said Cook County National Bank in that respect, nor does this defendant know whether said complainant at the time of making and delivering said note was indebted unto said Cook County National Bank, nor whether the indebtedness incurred by the making of said note was for any of the objects specifically named in sections 5202 & 5203 of the Revised Statutes of the United States, but defendant avers that the said sections do not, nor do either of them, prohibit the national banks organized under the laws of Congress from incurring indebtedness other than such as named in said two sections until the indebtedness exceeds the amount of the capital stock at such time actually paid in and remaining undiminished by losses or otherwise, and defendant alleges that there is nothing in said bill or amended bill to show that at the time of the execution and delivery of said

59 note the indebtedness of said complainant exceeded the amount of its capital stock at that time actually paid in and then remaining undiminished by losses or otherwise.

This defendant says it has no knowledge except from said amended bill whether complainant intended to violate the provisions of section 5183 of said Revised Statutes, nor whether it expected said note would be merely a memorandum of the arrangement between complainant and said Cook County National Bank, as stated in said amended bill, but defendant says that in and by said amended bill the said complainant claims that the making and delivery of said note was an illegal transaction, and defendant says if the same was an illegal transaction and a violation of the statutes of the United States, then a court of equity will not lend its assistance to any party to such transaction to relieve from the same or the results thereof.

And this defendant denies that said loan and trust company was in any wise put on inquiry by the recitals on the face of said note, or by the provisions of law regulating the transactions of national banks, and it denies that said loan and trust company was under any obligation to ascertain whether complainant had a valid defence to

60 the whole or any part of said note, or whether complainant had the power to execute a post note which might be rediscounted before maturity, free from equities between the original parties thereto, because the defendant says the law gave said complainant the power to execute such note, and the same might be lawfully discounted and negotiated before the maturity thereof, free from all equities between the original parties thereto.

Defendant says that at the time of the execution and delivery of said note, and for a long time before then and ever since that time, none of

the officers of the Cook County National Bank were or have been officers of said loan and trust company, nor was Chauncey T. Bowen, at the time or about the time of the delivery and sale of said note to said loan and trust company, an active or passive officer, manager or agent, of said Cook County National Bank, nor did said loan and trust company know that said note was intended for negotiation, nor that complainant had any set off thereto, nor did said loan and trust company at that time know that said Cook County National Bank was in an embarrassed condition.

61 Defendant says that it does not know except from the statements in said bill and amended bill whether said complainant ever applied to said Cook County National Bank for a return of said bonds or offered to pay the said sum of $132.00 to said Cook County National Bank, nor does defendant know what reasons were given by said bank for refusing to deliver said bonds to said complainant, and therefore this defendant leaves said complainant to make proof of said matters if the same shall be deemed material; and this defendant says that said complainant has not in and by its said bill made or stated such a case as doth or ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant or any of said defendants, and this defendant hopes it shall have the same benefit thereof as if it had demurred to said complainant's bill; and this defendant having now fully answered the said bill of complaint prays to be hence dismissed with its reasonable costs, &c.

CENTRAL TRUST COMPANY OF NEW YORK,
Receiver of the New York State Loan and Trust Company.

GWYNN GARNETT,
Sol'r & of Counsel.

(Endorsed:) Filed June 23, 1877. Wm. H. Bradley, cl'k.

62 And on the same day, to wit, the 23rd day of June, A. D. 1877, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

In chancery.

FIRST NATIONAL BANK OF WYANDOTTE, KANSAS,
vs.
COOK COUNTY NATIONAL BANK, OF CHICAGO, A. H. Burley, receiver of said Cook County National Bank, Herman B. Barclay, Charles H. Voorhies, New York State Loan and Trust Company, and the Central Trust Company of New York, receiver of said loan and trust company.

This cause came on to be heard at this term upon the pleadings and proofs filed and produced by the respective parties thereto and was argued by counsel, and thereupon, upon consideration thereof, it was found as matter of fact that the note for the sum of five thousand dollars mentioned in the bill in this cause was executed at the time and in the manner and upon the considerations mentioned in said bill; that in pursuance of the understanding upon which said note was discounted as stated

in said bill, the complainant allowed four thousand dollars of the proceeds of such discount to remain on deposit to the credit of said complainant with said Cook County National Bank until such
63 last mentioned bank failed and became insolvent and passed into the hands of its said receiver, and that at the time of such failure and the appointment of such receiver there was also a further sum standing to the credit of the complainant with said Cook County National Bank of eight hundred and sixty-eight dollars, so that when said note of five thousand dollars matured there remained with said Cook County National Bank a credit of $4,868.00 in favor of the complainant; that said note of five thousand dollars was secured by the pledge of municipal bonds of the city and county of Wyandotte as stated in said bill which now remain in the hands of the receiver of said Cook County National Bank; that said Cook County National Bank shortly after the execution of said note and in the month of October, A. D. 1874, sold and assigned said note to the said New York State Loan and Trust Company, and that said New York State Loan and Trust Company discounted said note in the usual and ordinary course of business, allowing therefor the sum of $4,886.00, and that it had no other notice of the facts as to the origin of said note and the agreements in relation thereto between said complainant and the Cook County National Bank than such as appeared from the face of said note and the national banking laws,
64 and said note is now held by the receiver of said New York State Loan and Trust Company, and the said municipal bonds are now in the hands of the said receiver of the said Cook County National Bank.

And as matter of law it is found and adjudged that the said New York State Loan and Trust Company took the assignment of the said note as aforesaid subject to the equities existing between the said complainant and the said Cook County National Bank with respect thereto, and was in law chargeable with notice of all defences on the part of said complainant growing out of the circumstances under which said note was delivered to said Cook County National Bank, and that the said receiver of said New York State Loan and Trust Company is in like manner bound by such notice and holds the said note subject to the same defences which the complainant would have to the collection of the same if the same had never been assigned or transferred in any manner by said Cook County National Bank, and that the complainant is entitled to have set off against said note the sum of forty-eight hundred and sixty-eight dollars so standing to its credit with said Cook County National Bank as aforesaid, and upon payment to the said receiver of the said New York State Loan and Trust Company of the balance of
65 one hundred and thirty-two dollars is entitled to have said note adjudged and decreed to be void as an obligation of said complainant, and also to have the said Burley, receiver as aforesaid, surrender and deliver over to it, the complainant, the said municipal bonds.

Now, therefore, it is ordered, adjudged, and decreed that the said complainant do pay into this court, for the use of the said receiver of the said New York State Loan and Trust Bompany the sum of one hundred and thirty-two dollars and that thereupon the said note shall become null and void as an obligation of the said complainant, and that the said sum of $4,868.00 be set off against that amount of the principal of the said note, and that thereupon the accounts between the complainant and the said Cook County National Bank and its said receiver do stand balanced and settled, and that such receiver do thereupon surrender and

deliver over to the complainant all of the said municipal bonds mentioned in said bill with any sum of interest that he may have collected thereupon.

And it is further ordered and decreed that said complainant pay all the costs in this case to be taxed by the clerk and that execution issue therefor.

66 And thereupon the New York State Loan and Trust Company and The Central Trust Company of New York, receiver of said New York State Loan and Trust Company, pray an appeal to the Supreme Court, which is allowed on filing bond in the sum of fifteen hundred dollars, with security to be approved by the court.

And on the same day, to wit, the 23d day of June, A. D. 1876, the said The New York State Loan and Trust Company and The Central Trust Company of New York, receiver of said New York State Loan and Trust Company, filed in said clerk's office their certificate of evidence in said entitled cause, which said certificate of evidence is in the words and figures following, to wit:

Certificate of evidence.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In circuit court of the United States for northern district of Illinois. In chancery.

THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF CHICAGO, Herman B. Barclay, Charles H. Voorhies,
67 The New York State Loan and Trust Company, and the Central Trust Company of New York, receiver of the New York State Loan and Trust Company.

Be it remembered that on the hearing of the above-entitled cause at the May term, A. D. 1877, of said court, the Hon. Henry W. Blodgett, presiding as chancellor of said court, the said complainant to maintain the issues on its part, by consent of said defendants, offered and read in evidence the following affidavit, to wit:

Circuit court of the United States, northern district of Illinois.

FIRST NATIONAL BANK OF WYANDOTTE, KANSAS, compl't,
vs.
COOK COUNTY NATIONAL BANK, N. Y. STATE Loan and Trust Company et al., def'ts.

STATE OF KANSAS,
Wyandotte County, ss:

B. Judd, being first duly sworn, on oath says that on the 24th day of September, A. D. 1874, he was the cashier of the complainant in this cause; that on or about that day he was in the city of Chicago,

68 in said district, and had a conference with B. F. Allen and other officers of said Cook County National Bank, in relation to opening an account for the complainant with said Cook County National Bank; that said complainant was then and still is a national bank, organized under the laws of the United States, and located and having its office for the transaction of business at Wyandotte, in the State of Kansas, and in the transaction of its business then had and still has considerable transactions with the business men of Chicago, requiring for the convenient despatch of such business that it should have a corresponding bank in Chicago upon which to draw bills and to which to forward collections.

And deponent further says that at the said conference the said Allen, who was then the president of said Cook County National Bank, proposed to deponent that he should for and as the act of the complainant execute a four months' note, with security, for $5,000 and have the same discounted by said Cook County National Bank and the proceeds placed to the credit of the complainant, but not to be drawn against so as to reduce the credit for such proceeds below four thousand dollars,
69 and such note to remain with such Cook County National Bank to be surrendered to the complainant on renewal or close of the account.

And in pursuance of these suggestions this deponent at the said city of Chicago, and on or about the 24th day of September, A. D. 1874, did as the cashier of the complainant and as and for the act of the complainant, execute the note described in the amended bill on file in this cause, and for the purposes and upon the agreements set forth in said amended bill.

And deponent says that it was distinctly understood and agreed between the deponent and the officers of said Cook County National Bank at the time the said note was received by it and placed to the credit of complainant as set forth in said amended bill that such note should be held as a memorandum by said Cook County National Bank and not be negotiated or separated from the collaterals accompanying the same; and this deponent says that as between the complainant and the said Cook County National Bank and its receiver, said complainant is
70 entitled upon a fair adjustment of accounts to a return of said note and the collateral municipal bonds accompanying the same, upon paying to the said receiver a small balance of one hundred and thirty-two dollars or thereabouts, which the complainant has at all times been ready to do. And deponent says that he has read a copy of the amended bill in this cause, and that such amended bill, so far as it states the facts as to the manner and agreements upon which the said Cook County National Bank obtained the said note and collaterals from the complainant through this deponent is true in substance and in fact.

And this deponent also says that in entering into the arrangement by which said note was delivered to said Cook County National Bank he was not aware that the making of such notes was prohibited by the laws of the United States, but he in good faith attempted to make the contract out of which the execution of said note arose, and no question as to its validity would ever have been made by complainant except for the fraud practised by said Cook County National Bank in attempting to negotiate the same, detached from the collaterals which
71 accompanied it.

BYRON JUDD.

Subscribed and sworn to before me this 22 day of March, 1877.
[SEAL.] J. B. SCROGGS,
Notary Public.

Which affidavit it was agreed by the parties should have the same force and effect as evidence as if said Judd had testified in the same manner in open court; which was all the evidence offered on said hearing by said complainant, and the said defendants to maintain the issues on their part, by consent of said complainant, then and there offered and read in evidence the following affidavit, to wit:

CITY AND COUNTY OF NEW YORK, *ss:*

Henry J. Hubbard, of the city of New York, being duly sworn, says: "I was during the whole of the year one thousand eight hundred and seventy-four, and prior and subsequent thereto, the secretary of the New York State Loan and Trust Company and was familiar with all the affairs and transactions of said company, and know from my personal knowledge
that on the 7th day of October, 1874, in the ordinary and usual
72 course of business a note of five thousand dollars, dated September 24th, 1874, payable four months, drawn by B. Judd, cashier, to the order of and endorsed by the Cook Co. National Bank, was presented at the office of the said trust co., in the city of New York, for discount, and the same was discounted at the rate of seven per cent. per annum, and the amount of the note less the discount, that is the proceeds of said note, namely, four thousand eight hundred and eighty-six $\frac{25}{100}$ dollars, was passed to the credit of the Cook County National Bank, of Chicago, which bank kept an account with the trust company; said note is the note referred to in the proceedings brought by the First National Bank of Wyandotte, Kansas, against the New York State Loan and Trust Company.

Deponent further says: "I personally attended to the discount of said note, and the entries made in the books of the company showing the discount and the credit to the account of the Cook County National Bank of the proceeds of the discount of said note are in the handwriting of the bookkeeper, and were made by him on said 7th day of October, 1874."

73 And deponent further says that said note was so discounted in perfect good faith, and that deponent had no knowledge, information, or belief, neither had I nor had any officer of said trust company, as deponent is informed and believes, any notice or intimation that there was any arrangement, understanding, or agreement whatsoever between the First National Bank of Wyandotte, Kansas, and the Cook County National Bank of Chicago, either as to this note or as to any other note or transaction whatsoever. The facts are simply that the said note was offered in the ordinary course of business for discount for the account of the Cook County National Bank, and that the same was discounted at the usual and legal rate, and the proceeds were passed to the credit of the Cook County National Bank. Deponent further says that annexed hereto is a just, true, and full statement, taken from the books of the New York State Loan and Trust Company, showing the daily balances in the account of the Cook County National Bank, from the 7th day of October, 1874, the date of the discount of the
said note, up to and including the 15th day of October, 1874, on
74 which last mentioned day the account was overdrawn.

The second statement hereto annexed is a just, true, and full

statement from the book of the New York State Loan and Trust Company, showing the amount of the indebtedness of the Cook County National Bank of Chicago to the said trust company at the date of the failure and suspension of the said Cook County National Bank.

H. J. HUBBARD.

Sworn to before me this 17th day of Nov., 1876.

JAMES C. GERARD,
Notary Public, N. Y. C.

1. Statement showing the daily balances of the Cook County National Bank of Chicago, as appears on the books of the New York State Loan and Trust Company, from the seventh day of October, 1874, up to and including the 15th day of October, 1874.

Bal. cr. Cook Co. B'k, Oct.	7	15,810	51
	8	1,046	51
	9	1,046	51
	10	1,046	51
	11	1,554	97
	12	1,554	97
	13	1,554	97
	14	1,554	97
75 Overdrawn dr. bal.	15	32	78

Which affidavit it was agreed by the parties should have the same force and effect as evidence as if said Hubbard had testified in the same manner in open court.

2. Amount of indebtedness of Cook Co. Nat'l Bank at time of its failure to trust co.:

Discounted paper	95,889	58
Overdraft	4,450	33
Loan of Nov. 19, '74	25,000	
" " Dec. 29, '74	25,000	

And the said defendants then and there also offered and read in evidence the note described in said amended bill of complaint and the endorsement thereon, which note and endorsement are in the words and figures as follows, to wit:

$5,000.00. CHICAGO, ILLINOIS, *Sept. 24th*, 1874.

Four months after date we promise to pay to Cook County National Bank of Chicago, or order, five thousand dollars, with interest at the rate of per cent. per annum after due, value received, all payable at Cook County National Bank.

B. JUDD,
Cashier 1st Nat'l B'k Wyandotte, Ka's.

$6,000 Wyandotte Co. & City bonds as collateral.

(Across the face in red:) Protested for non-payment. January 27th, 1875. John Ahern, notary public.

76 Endorsement as follows:

"For value received we hereby guarantee the payment of the within note at maturity, or at any time thereafter, with interest at ten

per cent. per annum until paid, and agree to pay all costs and expenses paid or incurred in collecting the same.

"B. F. ALLEN, *Pres't.*"

And I, Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, and as such holding the circuit court of the United States for the northern district of Illinois, on the hearing of said cause, do hereby certify that the foregoing is all the evidence that was offered on the hearing of said cause by the respective parties thereto.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed June 23, 1877. W. H. Bradley, cl'k.

77 Afterwards, to wit, on the 20th day of August, A. D. 1877, said defendants, the Central Trust Company of New York, receiver, &c., filed in said clerk's office its appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, the Central Trust Company of New York, receiver of the New York State Loan and Trust Company, as principal, and Heman G. Powers, of the city of Chicago, State of Illinois, as surety, are held and firmly bound unto the First National Bank of Wyandotte, Kansas, in the penal sum of fifteen hundred dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this 14th day of August, 1877.

78 The condition of the above obligation is such that whereas, in a certain cause lately pending in the United States circuit court for the northern district of Illinois, on the chancery side thereof, wherein the First National Bank of Wyandotte, Kansas, was the complainant, and the Cook County National Bank of Chicago, the New York State Loan and Trust Company, the Central Trust Company of New York, receiver of the New York State Loan and Trust Company, Herman B. Barclay, Charles H. Voorhies, and A. H. Burley, receiver of the Cook County National Bank of Chicago, were defendants, there was a final decree entered on the 23d day of June, 1877, from which decree the Central Trust Company of New York, receiver of the New York State Loan and Trust Company, have prayed for and obtained an appeal to the Supreme Court of the United States to reverse the said decree:

Now, the condition of the above obligation is such that if the said The Central Trust Company of New York, receiver of the New York State Loan and Trust Company, shall prosecute its said appeal to effect and answer all damages and costs, and abide by the order and decree of said circuit court of the United States and of the said Supreme

79 Court if he shall fail to make his said plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] THE CENTRAL TRUST CO., N. Y.,
Receiver of the N. Y. State Loan and Trust Co.,
By H. F. SPAULDING, [SEAL.]
Pres't.
HERMAN G. POWERS. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES C. GERARD.

STATE OF NEW YORK,
City and County of New York, ss:

On this seventeenth day of August, 1877, before me personally came Henry F. Spaulding, president of the Central Trust Company of New York, receiver of the New York State Loan and Trust Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he was president of the Central Trust Company of New York, receiver of the New York State Loan and Trust Company; that he knew the corporate seal of said company; that the seal affixed to the within instrument was such corporate seal; that it was affixed by order of the board of directors
80 of said company, and that he signed his name thereto by the like order as president of said company.

Witness my official hand and seal on the above date.

[SEAL.] JAMES C. GERARD,
Notary Public N. Y. City and County, No. 51.

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed August 20, 1877. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the 27th day of August, A. D. 1877, said defendants, Herman B. Barclay, Charles H. Voorhies, and A. H. Burley, receiver, &c., filed in said clerk's office their refusals to join in the appeal in said entitled cause, which said refusals are respectively in the words and figures following, to wit:

Refusal of Herman B. Barclay and Charles H. Voorhies to join in appeal.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In circuit court of United States for northern district of Illinois. In chancery.

THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF Chicago et al.

81 To Herman B. Barclay and Charles H. Voorhies, two of the defendants in above cause:

You are hereby requested to join the undersigned in an appeal to the Supreme Court of the United States from the decree entered in the above-entitled cause.

THE NEW YORK STATE LOAN AND TRUST COMPANY.
THE CENTRAL TRUST COMPANY OF NEW YORK,
Receiver of said Loan and Trust Company.

We hereby decline to join in an appeal to the Supreme Court of the United States from the decree entered in above-entitled cause.

June 28th, 1877.

HERMAN B. BARCLAY.
CHARLES H. VOORHIES.

(Endorsed:) Filed August 27, 1877. Wm. H. Bradley, clerk.

Refusal of A. H. Burley, receiver, &c., to join in appeal.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States circuit court for northern district of Illinois.—In chancery.

FIRST NATIONAL BANK OF WYANDOTTE, Kansas,
vs.
THE COOK COUNTY NATIONAL BANK OF Chicago et al.

To A. H. Burley, receiver of the Cook County National Bank of Chicago.

82 You are hereby requested to appear and join the undersigned in an appeal to the Supreme Court of the United States from the decree entered in the above-entitled cause.
June 29th, 1877.

CENTRAL TRUST COMPANY OF NEW YORK,
Receiver of the New York State Loan and Trust Company.

I hereby refuse to join in said appeal.
June 29th, 1877.

A. H. BURLEY,
Receiver of the Cook County National Bank of Chicago.

(Endorsed:) Filed August 27, 1877. Wm. H. Bradley, clerk.

83 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein First National Bank of Wyandotte, Kansas, is the complainant, and Cook County National Bank of Chicago et al. are the defendants, as the same appears from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this nineteenth day of September, A. D. 1877, and of our Independence the one hundred and second year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

84 In the Supreme Court of the United States. To October term, A. D. 1877.

THE CENTRAL TRUST COMPANY OF NEW York, receiver of the New York State Loan and Trust Company, appellant,
vs.
THE FIRST NATIONAL BANK OF WYANDOTTE, Kansas, appellee.

And now comes the said the Central Trust Company of New York, receiver of the New York State Loan and Trust Company, the appellant,

by Samuel W. Packard, its solicitor, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The court erred in decreeing that the note for $5,000.00, mentioned in said decree, shall become null and void as an obligation of said appellee, upon the payment of $132.00 into said circuit court by said appellee for the use of said appellant.

2nd. The court erred in decreeing that the receiver of the Cook County National Bank should surrender and deliver over to appellee all of the said municipal bonds mentioned in said bill, with any sum of interest he may have collected thereupon.

3rd. The court erred in directing said municipal bonds and any sum of interest collected thereon by the receiver of the Cook County National Bank to be surrendered over to the appellee upon the payment of $132.00 into said circuit court for the use of said appellant.

4th. The court erred in finding and adjudging as matter of law
85 that the New York State Loan and Trust Company took the assignment of said note for $5,000.00 subject to the equities existing between the said First National Bank of Wyandotte, Kansas, and the Cook County National Bank with respect thereto, and was in law chargeable with notice of all defences on the part of said First National Bank growing out of the circumstances under which said note was delivered to said Cook County National Bank.

5th. The court erred in finding and adjudging that said First National Bank of Wyandotte, Kansas, is entitled to have the sum of $4,868.00 set off against said note for $5,000.00.

6th. The court erred in not dismissing the bill of complaint for want of equity.

And the said appellant prays that the said decree may be reversed, annulled, and altogether held for nothing; and that it may be restored to all things which it hath lost by occasion of the said decree, &c.

SAMUEL W. PACKARD.

Joinder in error.

In the Supreme Court of the United States. To October term, A. D 1877.

THE CENTRAL TRUST COMPANY OF NEW York, receiver of the New York State Loan and Trust Company, appellant,
vs.
FIRST NATIONAL BANK OF WYANDOTTE, Kansas, appellee.

86 And the said First National Bank of Wyandotte, Kansas, appellee, by Sleeper & Whiton, its solicitors, comes and says that there is no error, either in the record and proceedings aforesaid, in rendering the decree aforesaid in manner and form as above assigned; and therefore it prays that the said decree may be affirmed, and that its costs may be adjudged to it, &c.

SLEEPER & WHITON,
Sol'rs for Appellee.

(Indorsement on cover:) No. 270. The Central Trust Company of New York, receiver of the New York State Loan & Trust Company, appellants, vs. The 1st National Bank of Wyandotte, Kansas. N. Illinois C. C. U. S. Filed 11th October, 1877.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1879.

THE CENTRAL TRUST CO. OF NEW YORK, RECEIVER OF NEW YORK STATE LOAN AND TRUST CO. *Appellant.*

vs.

THE FIRST NATIONAL BANK OF WYANDOTTE, KANSAS, *Appellee.*

Appeal from the Circuit Court of the U. S. for the Northern District of Illinois.

BRIEF FOR APPELLANT.

SAMUEL W. PACKARD, Solicitor for Appellant.

RICHARD GARNETT, LEGAL PRINTER, ROOM 11 EXCHANGE BUILDING.

IN THE

Supreme Court of the United States.

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vs.

THE FIRST NATIONAL BANK OF WYANDOTTE, KANSAS, *Appellee.*

Appeal from the Circuit Court of the U. S, for the Northern District of Illinois.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This was a suit in Chancery, filed in the United States Circuit Court for the Northern District of Illinois, by the First National Bank of Wyandotte, Kansas, against the New York State Loan and Trust Company and others. After the bill was filed the New York State Loan and Trust Company became insolvent and was placed in the hands of

the Central Trust Company of New York, as its Receiver.

The object of the bill was to have a note for $5,000 made by the Wyandotte Bank, cancelled and surrendered, and the collateral securities pledged therefor delivered up to the complainant.

The facts are that on the 24th day of September, 1874, the Wyandotte Bank made an arrangement with the Cook County National Bank, by which the latter was to discount the four months note of the former for $5,000; and the Wyandotte Bank was to keep its Chicago account with the Cook County Bank, and the sum of $4,000 of the proceeds of the discount was to remain on deposit with the Cook County Bank until the note matured. The note was executed of that date and $6,000 of Wyandotte City and County Bonds left with the Cook County Bank as collateral security for the note. On the lower margin of the note was the following memorandum: "$6,000 Wyandotte County and City Bonds as collateral." It was also a part of said arrangement that the note for $5,000 should be held as a memorandum between those two banks.

On October 7th, 1874, the note was endorsed by the Cook County National Bank and sold to the New York State Loan and Trust Company, which paid $4,886.25 for it in the usual course of business, in good faith and without notice. The note matured January 27th, 1875, but before that date the Cook County Bank had passed into the hands of a Receiver under the terms of the National Banking Act.

The Wyandotte Bank claims in its bill that at the

time of the failure of the Cook County Bank, it had in its possession $4,000 of the proceeds of the discount in addition to $868 on deposit in the usual course of business according to such understanding.

ASSIGNMENT OF ERRORS.

1. The Court erred in decreeing that the note for $5,000 mentioned in said decree, shall become null and void as an obligation of said appellee, upon the payment of $132 into said Circuit Court by said appellee for the use of said appellant.

2. The Court erred in decreeing that the Receiver of the Cook County National Bank should surrender and deliver over to appellee all of the said municipal bonds mentioned in said bill, with any sum of interest he may have collected thereupon.

3. The Court erred in finding and adjudging as matter of law that the New York State Loan and Trust Company took the assignment of said note for $5,000, subject to the equities existing between the said First National Bank of Wyandotte, Kansas, and the Cook County National Bank with respect thereto, and was in law chargeable with notice of all defences on the part of said First National Bank growing out of the circumstances under which said note was delivered to said Cook County National Bank.

4. The Court erred in finding and adjudging that said First National Bank of Wyandotte, Kansas, is entitled to

have the sum of $4,868 set off against said note for $5,000.

5. The Court erred in not dismissing the bill of complaint for want of equity.

BRIEF.

1. There is no proof that $4,000 of the proceeds of the discount was in possession of the Cook County Bank at the time of its failure. The only proof on that point is contained in the affidavit of Judd,(*printed Record p.* 28) in which he says: "As between the complainant and the said Cook County National Bank and its Receiver, said complainant is entitled *upon a fair adjustment of accounts* to a return of said note and the collateral municipal bonds accompanying the same, upon paying to the said Receiver a small balance of $132 or thereabouts, which the complainant has at all times been ready to do." This proof does not support the allegations of the bill. A fair adjustment of accounts, might include a variety of matters not at all connected with the transaction out of which that note grew, and it is somewhat remarkable that the witness did not state the *facts*; he was the cashier of the Wyandotte Bank and made the note and undoubtedly knew the facts. What he regards as "a fair adjustment of accounts," the court might regard as entirely unfair, the accounts that form the basis of his generalization, may embrace nothing but illegal charges against the Cook County Bank.

2. The bill alleges (*printed Record p.* 13) that the Wyandotte Bank, by its cashier made the note in question. No question can therefore be raised as to the authority of the cashier to execute the note. But it will be argued on

behalf of appellee that the Bank was powerless to execute a note at any place except its own place of business and the note having been executed in Chicago was for that reason void.

To this I reply:

(a). That if the place of executing the note was material, it should have been alleged in the bill. But there is no allegation in the bill as to the place of execution (*Record pp.* 12, 13, and 14). The recovery must be on the facts as stated in the bill. (b). It has been decided by this court in the case of Merchant's Bank *vs.* State Bank, (10 Wal. 604) that a National Bank may make a valid contract at the banking house of another bank. It is to be presumed that the Wyandotte Bank took such measures as may have been necessary to vest the cashier with authority, and such measures were the substantial part of the transaction and were no doubt adopted at the place of business of the Wyandotte Bank, and all that was left to be done by the cashier was merely the clerical act of writing and signing the note.

3. The Wyandotte Bank claims that the making of the note was an illegal contract. It certainly was either a legal or an illegal contract. If legal, the maker of the note has no standing in court. If illegal, it is because the statute expressly or impliedly prohibits the making of *post notes*, and in that event a court of equity will refuse its aid to set aside the transaction. The bill complains that the understanding between the Wyandotte Bank and the Cook County Bank was not observed by the Cook County Bank, but that it fraudulently transferred the note in vio-

lation of that understanding. The case is parallel with Batty *vs.* Chester, (5 *Beav.* 103) where the master of the rolls held that "this court has authority to relieve against an instrument which, although legal on the face of it, was in fact executed for an *illegal* or immoral purpose; but where a *party* to the *illegal* or immoral purpose comes himself to be relieved from the obligation he has contracted in respect of it, he must state distinctly and *exclusively* such grounds of relief as the court can legally attend to; he must not accompany his claim to relief, which may be legitimate, with claims and complaints which are contaminated with the original immoral purpose."(*p.* 109.)

If the contract was illegal, neither party will be assisted by the courts, but will be left to take care of themselves. Miller *vs.* Marckle, 21 *Ill.* 152.

4. "*Banking* and trading corporations have implied or incidental power to make negotiable paper."

1 *Dillon on Municipal Corp.* (*2d Ed.*) *Sec.* 407.

"Unless expressly restrained by its charter, every corporation has the incidental power to make any contract and evidence it by any instrument, that may be necessary and proper to accomplish the objects for which it is created. A note or bill therefore, made or received by such a corporation, is *prima facie* within its corporate powers, and therefore valid."

Straus *et al* Eagle Ins. Co., 5 *Ohio St.* 59.

In Campbell *vs.* Mississippi Union Bank, 6 *How.* (*Miss.*) 625, it was held that a bank having power to issue paper for circulation, may issue *post notes* if not restrained

by its charter.

That a bank, not prohibited by its charter, may issue *post notes*, see Fulton Bank *vs.* Phœnix Bank, 1 *Hall*, (*N. Y.*,) 619.

Perkins *vs.* Franklin Bank, 21 *Pick*, 483.

Staples *vs.* Franklin Bank, 1 *Met.* 43.

1 Daniel on Negotiable Inst. (2 *Ed.*) *Sections* 380, 381 and 382.

Curtis *et al vs.* Leavitt, 15 *N. Y pp.* 9-53.

Leavitt *vs.* Yates, 4 *Edw. Ch.* 134-165, side paging.

In First Nat. B'k *vs.* Nat. Ex. Bank, 2 *Otto* 122, the court construing the Nat. Banking Act, says on page 127: "Authority is thus given to transact such a banking business as is specified, and all incidental powers necessary to carry it on are granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs within the general scope of its charter, safely and prudently. This necessarily implies the right of a bank *to incur liabilities* in the regular course of its business, as well as to become the creditor of others. Its own obligations must be met, and debts due to it collected or secured. *The power to adopt reasonable and appropriate measures for these purposes is an incident to the power to incur the liability or become the creditor.*"

In Leavitt *vs.* Yates, 4 *Edwards Ch. Rep.* 165, side paging, the court says: "But the power to borrow money may be incidental to the power of discounting notes; and why may not a banking association, as well as an individ.

nal banker, borrow money, to be employed in that branch of business? I am at a loss to discover any good reason why they may not have the right to borrow for that purpose, if the state of their business, or the interest of the concern shall justify it. Borrowing money may be and I think is, incidental also to the power of buying bills of exchange, bullion and foreign coin. These they may sell as well as purchase, and in this unrestricted traffic occasion may frequently arise for money to meet their engagements, or to create funds abroad on which to place bills drawn by them for sale.

In Curtis *et al vs.* Leavitt, 15 *N. Y.* 9, the court on page 52 says: "And in examining the powers of banking corporations, the nature and incidents of banking as a business, when not under special legal restraints are in the highest degree important. It is true the question will always be one of corporate power, rather than of the rules and principles of banking; but those rules and principles may have a decisive influence in the construction of charters which profess to confer powers of this discription. And this leads me to observe that banking regarded as a business and not as a franchise, *includes the borrowing of money as one of its features or incidents.*"

5. A loan made to an individual by a National Bank is not void because it is in excess of one-tenth of its capital stock paid in, but the money loaned may be recovered, although the loan was in violation of Sec. 29, of the act of Congress, passed June 3d, 1864.

Shonnaker *vs.* National Mechanic's B'k, 2 *Abbott U. S.*, 416.

Stewart *vs.* National Union Bank, 2 *Abbott U. S.*, 424.

O'Hare *vs.* Second Nat. Bank, 77 *Penn. St.* 96.

Gold Mining Co. *vs.* National Bank, 6 *Otto* 640.

In Stewart *vs.* National Union Bank, (2 *Abbott U. S. Rep.*, 424,) it was held by Giles J., that a loan made a National Bank in excess of the amount allowed by Sec. 29, of the National Bank Act af June 3, 1864, is not void on that account, but the loan may be enforced, although the bank is exposed by Sec. 53 to forfeiture of its franchise and the officers participating are declared personally liable, and the court further held in that case, that although the loan might not be enforceable, still a court of equity would not interpose, at the suit of a creditor of the borrower, to cancel the transaction and compel a return of the securities, but would leave the parties where it finds them.

See Mott *vs.* United States Trust Co. 19 *Barb.* 569.

Tracy *vs.* Talmage, 14 *N. Y.*, 4 *Kern*, 162.

Although the Banking Act prohibits the National Banks from taking real estate security for loans, this court has held that when such security is in fact taken, the Bank may make it available for the purposes for which it was given.

National Bank *vs.* Matthews, (8 *Otto* 621.)

6. The note is not void under Sec. 5,202. There is nothing in the Record to show that the Wyandotte Bank at the time of the execution of the note was indebted "to an amount exceeding its capital stock."

Neither is it void under Sec. 5,203, because, 1st. It

was never *pledged nor hypothecated.* 2nd. Sec. 5,203 only applies to "notes of circulation." In the 2d line of the Section it reads: "notes *or* circulation," which is obviously a misprint. The language in the old law is "notes *of* circulation." In every other respect Sec. 5,203 is identical with the corresponding Section in the Banking law previous to the Revised Statutes.

7. The note in this case was made Sept. 24th, 1874, at that time the Revised Statutes were in force and the prohibition against issuing *post* notes was repealed. An examination of Sec. 5,183 and comparison with the section which it superseded, will show that the prohibition was removed. The restraint upon the issue of post notes was not again restored until February 18th, 1875. See appendix to Rev. Stat., page 1,437.

Whether the repeal was intentional or accidental can make no difference, because the fact still remains that the note in question was actually made, purchased by the New York State L. and T. Co., and paid for by it in good faith without notice before the prohibition was restored. The court must in good faith to the public, extend its protection to such a case and hold the Wyandotte Bank liable.

By repealing or dropping out of the section the three words "post notes or," Congress led the country to believe that the National Banks were no longer restrained from issuing *post notes.* It was very reasonable that Congress should remove the restraint at that time and perfectly natural that the public should believe that it was intentionally removed. The country was in great financial distress, and

many of the greatest banks in the land were laboring under great embarrassment. Without a resort to their credit many more of them must have succumbed to the pressure. The belief prevailed at the time that the restriction was purposely dropped out of the section. No doubt the Wyandotte Bank made the note under the impression that there was no longer any restraint on them, and the New York Loan and Trust Co. bought the paper under the same impression.

In Central Bank *vs.* Empire Stone Dressing Co., 26 Barb. 23, it was held that the repeal of the act of the Legislature prohibiting the circulation of bank notes of a denomination less than five dollars, repealed also, the consequences of the act in respect to contracts entered into while it was in force. That contracts made while prohibitory law was in force, whose consideration was always morally good, as between the parties were valid after the repeal. The court on p. 36, says: "That law had its day, and was repealed when a change in the wants of society or new light as to its interests arose. By that repeal the law is decided to be unwise for the present at least, and the contracts made under it, whose consideration was always morally good as between the parties, are now without the legal impediment of being contrary to legally established public policy (contraband of law) and are valid."

8. The New York Loan and Trust Co. was a purchaser for value before maturity in the usual course of business in good faith and *without notice*. (*Printed Rec. p.* 29.) There was nothing in the transaction which was

calculated to awaken the suspicions of the Loan and Trust Company. The day the note was sold to it the Cook Co. Bank had a balance to its credit on the books of the Loan and Trust Co. for over $15,000. The two banks had been doing business together and there was nothing to make either of them suspicious of the other. But a party buying a note is not required to be suspicious. Nothing short of bad faith will make him hold the note subject to defenses.

In Collins *vs* Gilbert, 4 Otto, 753 the court said: "Possession of such an instrument payable to bearer, or indorsed in blank, is *prima facie* evidence that the holder is the proper owner and lawful possessor of the same; and *nothing short of fraud*, not even gross negligence, if unattended with *mala fides*, is sufficient to overcome the effect of that evidence, or to invalidate the title of the holder supported by that presumption Story on Bills, (4 Ed.) Sec. 416; Byles on Bills, (10 Ed.) 119; Chitty on Bills, (12 Ed.) 257; Mills *vs.* Barber, 1 Mee & W., 425; Murrry *vs.* Lardner, 2 Wall. 110; Bank of Pittsburgh *vs.* Neal *et al*, 22; How. 96."

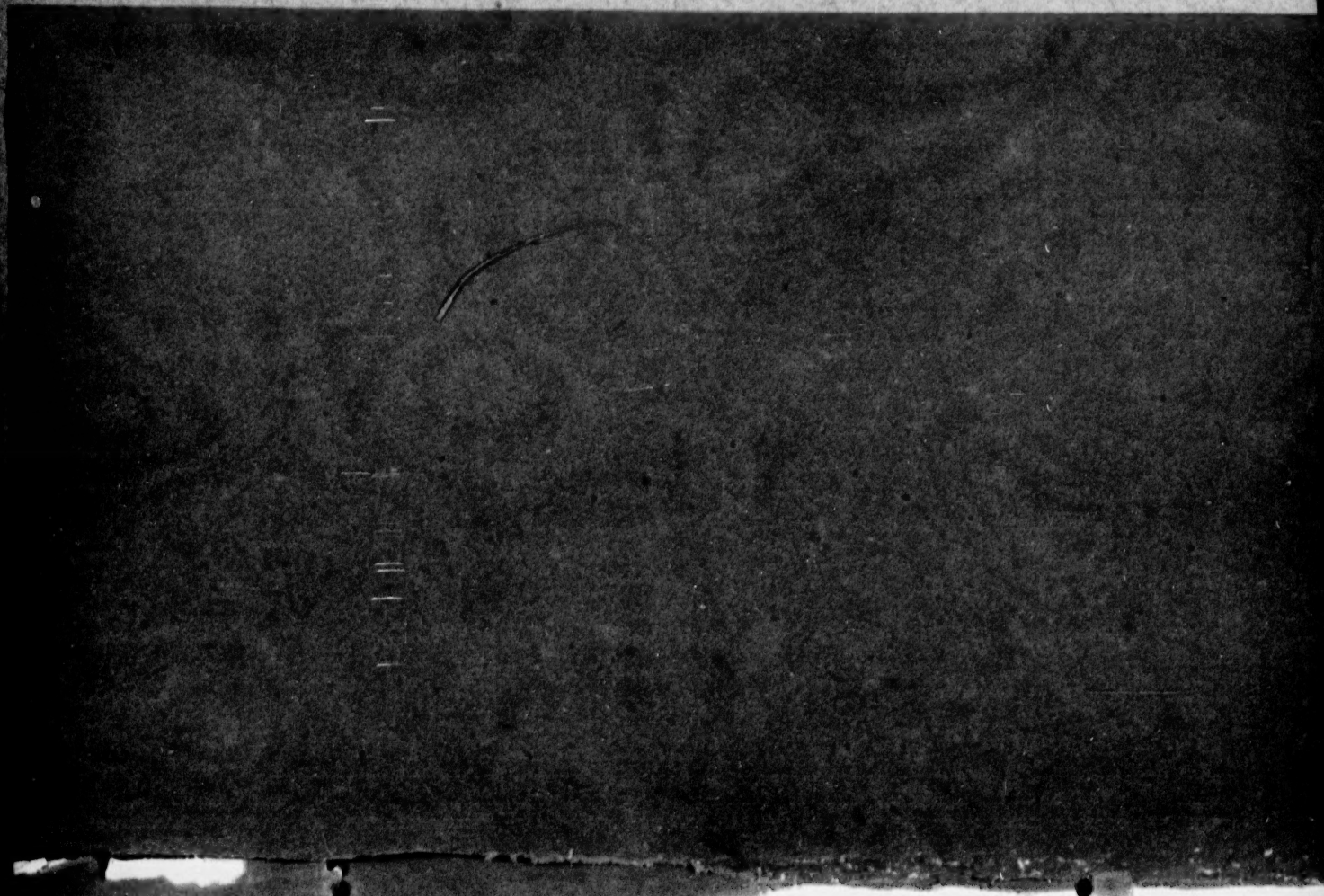
See also Goodman *vs.* Simonds, 20 How. 343.

Comstock *et al vs.* Hannah, 76 Ill. 530.

Respectfully submitted,

SAMUEL W. PACKARD,

Solicitor for Appellant.



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Brief and Argument for Appellee.

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Brief and Argument for Appellee.

THE subject of controversy in this suit is a note of which the following is a copy:

"$5,000. CHICAGO, ILLS., Sept. 24, 1874.

"Four months after date we promise to pay to Cook County "National Bank of Chicago or order, five thousand dollars with

"interest, at the rate of — per cent. per annum after due, value "received, all payable at Cook County National Bank.

"(Signed,) B. JUDD,

"Cashier First National Bank, Wyandotte, Kans.

"$6,000 Wyandotte Co. and City Bonds as collateral."

The record presents these questions--

1. Has the Cashier of a National Bank the power by virtue of his office to make in the place where the Bank is located, the negotiable promissory note of such Bank, *payable at a future date.*

2. If this question were decided affirmatively, would such Cashier also have the power to do the same thing in a city *500 miles distant from the one in which his Bank is located.*

3. If both the above questions should be decided negatively, in a litigation between *the original parties* to the note, would an *endorsee of the note* for a valuable consideration paid *bona fide* before maturity, stand in any better plight.

4. Is the Receiver of the N. Y. State Loan & Trust Co. in a position to claim protection as a *bona fide* purchaser of the note in question.

We take the ground that the National Banking Act expressly prohibits the making of time paper by National Banks.

Sections 5136 and 5137 of the Revised Statutes, U. S. having defined the powers of National Banks, then Sec. 5183, as amended (see appendix, page 1437) reads thus: "No National Banking Association shall issue *post notes*, or any other notes to circulate as money than such as are authorized by the provisions of this title."

Sec. 5196, provides that "every National Banking Association formed or existing under this title, shall take and receive *at par* for any debt or liability to it any and all *notes* or bills issued by any lawfully organized national banking association."

Sec. 5202 & *5203*, limit the character and amount of indebtedness which a national bank may incur.

Sec. 5208 makes it unlawful for any officer to certify checks, when there is not on hand a sufficient balance to pay the same, though in *this particular instance*, the wrongful act is declared an obligation to pay the same, but the wrongful act is made a misdemeanor on the part of the certifying officer. Looking to the other sections cited, and the mischiefs sought to be prevented, we find our claim corroborated, that *Sec. 5183* plainly and positively prohibits the issuing of *time notes* as in the case at bar, and if this is so, then the issuing of such a note was *ultra vires*, and it is utterly void in anyone's hands.

Such, we believe, has been the construction given to the legislation in question by all intelligent bankers, and such certainly has been the construction given to it by the Comptroller of the Currency. If a contrary interpretation were adopted, how easily all the safeguards provided against fraudulent banking might be evaded. It was the plain design of Congress that the exact situation of its affairs should at all times be *ascertainable by the examiner* to be appointed under the act, and that it should incur no liabilities except in the manner provided in the act, a plain record whereof should appear on its books. But if a cashier has the power to make a post note at *4 months* he may at *4 years*, and he may make them for an indefinite amount, and for his own fraudulent use, and yet it is

claimed would bind the deluded stockholders and creditors if in the hands of innocent purchasers; nay more, other national banks, under section 5196 would be obliged to accept these post notes in payment of debts due them from their customers, and to make the mischief co-extensive with the Union, if the note in question is to be sustained, then Mr. Judd, the cashier, could have continued his travels to every town in the U. S where a national bank is located, and there made an indefinite number of post notes in the name of his bank which in the hands of *bona fide* holders would bind not only his own bank, but also other National Banks who would be compelled to accept them in payment of any debts due them under section 5196, and such notes issued in quantities and for moderate amounts would very readily become a part of the circulating currency of the country at a small discount.

These evils were not unforseen by the framers of the National Banking laws and as we think they provided carefully and efficiently against them.

It is well known that the free banking law of New York was the model upon which the National Act was framed, and ever since 1840 the legislation of that State had expressly prohibited its banks from making any notes other than those payable on demand and without interest. The history of the financial disasters that immediately preceded this legislation in New York, explained and fully justified the retention by that State of the policy then adopted until the inauguration of the National Banking system.

In making the New York free banking law the basis of the National plan, the exposition of the New York law as made by the Courts of last resort of that State, must have been

before the minds of the framers of the National law. The law which took effect June 3rd, 1840, in N. Y., provided that "no banking association shall issue or put in circulation any bill or note of said association unless the same shall be made payable on demand and without interest."

In the various suits which arose out of the failure of the N. American Trust and Banking Co., the question as to the power of New York banks under this law to issue *time* obligations was as thoroughly discussed as any legal question ever presented to the courts of that State. The Banking Co. referred to had issued on Nov. 30, 1840, a series of 48 time notes of one thousand pounds each, bearing 7 per cent. interest, and secured the same by a deed of trust—and certain of these notes were taken up by the Banking Co. by issuing therefor *time certificates of deposit*, and the question arose whether the notes were void in the hands of any holder as well as the deed of trust, and the certificates of deposit. The first time these questions came before the Court of Appeals of N. Y., was in 1849, in the case of *Leavitt vs. Palmer, 3 N. Y. 19*, affirming same case in 5 Barb 9, under the title of *Leavitt vs. Blatchford*. We invite attention to the reasoning of Judge Bronson on these questions, beginning at the foot of page 32, in 3 N. Y.—where the Court affirms the invalidity of the notes, trust deed and certificates of deposit.

The next case in which the Court of Appeals discussed the power of this Banking Co. to make time securities was *Tracy vs. Talmadge, 14 N. Y., 162*. In that case the question was whether a vendor of stocks to the Banking Co. who *prior to June 3. 1840* had received therefor certain obligations secured by trust deed all bearing date prior to *that day*, could

abandon them on account of their illegality under the law prior to that date, and claim a recovery for the actual value of the stocks delivered; and the Court held, after several arguments and a strong dissent, that although under the law prior to June 3, 1840, the Banking Co. had no power to make the securities in question, yet that the vendor was not *in pari delicto*, that the transaction was not *malum in se*, and so the parties were not equally guilty and therefore the claim for the value of the stocks was sustained as upon an implied assumpsit.

In the previous case of *Talmage vs. Pell*, 7 N. Y. 328, the same Court had decided that this Banking Co. under the law as it existed prior to June 3, 1840, had no power to buy stocks for speculation, and that a mortgage security which it had transferred in making such a purchase prior to the date last mentioned could not be foreclosed in favor of the vendor.

Again in the case of *Curtis vs. Leavitt*, 15 N. Y., 9, near 300 pages are devoted to a renewed examination of the question as to the powers of the Banking Co. and it was held that certain securities which it had issued *prior to June 3, 1840* were not invalidated by the law which took effect on that day—but it was assumed that if the securities had been issued after that date, they would have been absolutely void in the hands of any one as in the case of *Leavitt vs Palmer*, 3 N. Y., 19.

In *Leavitt vs. Blatchford* 17 N. Y., 521, the question arose whether certain *bonds* of this Banking Co. issued July 1, 1840, and secured by trust deed and delivered to certain other Banks to take up prior obligations of the Banking Co. were valid in the hands of those Banks. Their validity was sustained in the prevailing opinion on the ground that the *bonds* in question were not within the language of the act of June 3, 1840, but the Court

say (p. 539) that "it is well settled that the prohibition in the act of 1840, extends to *all negotiable promissory notes* and bills of exchange whether intended to be put in circulation or not"—and when this Banking Co. on June 30, 1841, made a negotiable promissory note on 60 days time to Swift & Co. with a guaranty thereon endorsed by a third party, Bronson C. J. said "the note is directly within the terms of the prohibition of the act of 1840,—that act has no reference to the circulation of such notes asmoney, but was designed to prohibit them altogether for any purpose.

The guaranty partakes of the character of the principal contract and is equally illegal."

Swift vs. Beers, 3 Denio, 70.

And when the Banking Co. undertook to make a similar note on Dec. 15, 1840, and to secure it by an assignment of collaterals it was held that not only was the note void, but the assignment of collaterals was also.

Tylee vs. Yates, 3 Barb, 222.

We find the same doctrine maintained in many other cases iu N. Y., arising under the act of 1840. Thus in *Bank Com'rs vs. St. Lawrence Bank*, 8 Barb., 436, the St. Lawrence Bank undertook to make a 10 months note on interest, to purchase stocks for the Bank. The President had guaranteed the note and had taken it up after maturity. It was held that he had a valid claim, as upon an implied assumpsit, against the Bank which had received the stocks, notwithstanding the note and his guaranty could not have been enforced. But even this relaxation of the rule was not permitted to stand, and the case was reversed in the Court of Appeals. 7 N. Y., 513.

Ontario Bank vs. *Schemerhorn*, 10 Paige 109, arose under the law as it stood prior to June 3, 1840, and the Court held that a time note might be made by a bank *if it was not negotiable* and could not therefore be used as a substitute for money.

In *Barnes vs. Ontario Bank*, 19 N. Y., 156, the question was whether a certificate of deposit issued in 1857, and signed by the Cashier but not by the President, was a valid contract. The Court say, "there is no pretense that these certificates, *payable as they were on demand*, fall within any of the restraints imposed by the banking laws of this State," and it was held that the certificates were valid in the hands of a *bona fide* endorsee, notwithstanding the law of N. Y. provided that "contracts made by any such association and all notes and bills by them issued and put in circulation as money, shall be signed by the President or Vice President and Cashier thereof".

In *Oneida Bank vs. Ontario Bank*, 21 N. Y., 490, it was held that a certificate of deposit payable on time, was void in the hand of an innocent indorsee although an action on the implied assumpsit was sustained for the money which the bank obtained on the certificate; and see *Pelham vs. Adams*, 17 Barb., 384; *Green vs. Seymour*, 3 Sandf. Chy. 292.

The decisions in N. Y., have for many years held inflexibly to the rule that a private corporation not authorized to loan money or discount paper could not take a valid note or mortgage securing such loan or discount.

Atty. Gen'l vs. Life & Fire Ins. Co., 9 Paige, 470.
Utica Ins. Co. vs. Scott, 19 Johns, 1; 8 Cow., 20, 709
" " *Sturges*, 2 Cow., 664, 678.
In re Jaycox, 12 Blatch., 209.

It is therefore certain that at the time the National Bank-

ing law came into existence, if the note in question had been executed by the cashier of a bank of the State of New York, the Courts of that State would have declared it absolutely void in the hands of any one.

And can it be believed that the framers of the National Act intended to adopt a more lax rule as to the issuing of time obligations, which, if valid, would soon begin to circulate as money, than prevailed in the State from whence the whole scheme was derived.

Under a similar statute the Courts of Mass. held the same rule as in New York.

White vs. Franklin Bank, 22 Pick., 181.

In this Court no disposition has been shown to enlarge the powers of corporations to issue negotiable securities.

West St. Louis Savings Bank vs. Shawnee Co. Bank, 95 U. S., 557.
First National Bank vs. Nat'l Exch. Bank, 92 U. S., 122.
Police Jury vs. Britton, 15 Wall., 566.
Merchants Bank vs. State Bank, 10 Wall., 604.
The Mayor vs. Ray, 19 Wall., 468.
Pearce vs. Madison R. R. Co., 21 How., 441.
U. S. vs. City Bank of Columbus, 21 How., 356.
Fleckner vs. Bank U. S., 8 Wheat., 338.
Bank U. S. vs. Owens, 2 Peters, 527.

We would also refer to the unreported decision of Judge Blodgett in the case of *People's Bank of Belleville vs. Manfrs. Nat'l Bank*, holding that a National Bank had no power to guarantee commercial paper, and which judgment was based on the previous unreported case of *Adams vs. Cook County*

National Bank, decided by His Honor Judge Harlan of this Court, in which he held that Allen as President had no power to bind his bank by a guaranty of the note of H. C. Nutt & Co. And see—

Root vs. Goddard, 3 McLean, 102.
Root vs. Wallace, 4 do 8.
Davis vs. Bank, 4 do 387.
Stewart vs. National Bank, 2 Abbott's Cir. Court U. S., 424.
1 Dillon on Municipal Corps., §§ 415 and 446.
Angell and A. on Corps., § 270, 271.

But it will be claimed that the language of the National Banking Law forbidding the issue of "post notes or any other notes to circulate as money, than such as are authorized by the provisions of this title," is to be interpreted as meaning only that no post notes *to circulate as money* are to be issued, and that post notes *not* to circulate as money are not prohibited.

But a prohibition upon issuing post notes to circulate as money, would be superfluous, since the statute points out the only way circulating notes can be obtained through the Comptroller on the deposit of securities, and if only the effect claimed were to be given to the language, then in spite of the precautions taken in the Banking Act to prevent the circulating of *unsecured* notes, a National Bank might issue its notes in the usual form, or in the form of certificates of deposit, in small amounts, and payable to the bearer at one or more days after date, and flood the country with them, and then to the complaints of the Comptroller, reply, we did not issue these notes *to circulate as money*, we made them for an actual indebtedness of our bank for moneys deposited, and are ready to pay them

on presentment and demand. The enumeration of offenses declared penal in Sec. 5209 R. S. U. S., shows clearly that the making of time notes was not deemed a power that could be abused by the officers of a National Bank.

It is also worthy of note that the attention of Congress was particularly called to this subject of *post notes* by the amendment in the Appendix to the Revised Statutes, to which we have referred.

As illustrative of the determination of the Courts to hold National Banks strictly within the letter of their granted powers we refer to the numerous cases cited by Mr. Thompson in his National Bank cases in the notes to

Merchants Bank vs. State Bank, at p. 62.
Weckler vs. First National Bank, at p. 533.
First National Bank vs. Pierson, at p. 639.
" " *vs. Ocean Bank*, at p. 728.
Wiley vs. First National Bank, at p. 911.

II.

We now come to enquire whether if it be conceded that the Cashier of a National Bank has the power at the place of business of his Bank, to make a time note binding it, he can exercise the same power in a town 500 miles distant.

Certainly Judd's *ex officio* powers as Cashier *under any system of banking*, would not have extended to the creation of this $5,000 debt with the onerous conditions annexed, in a city remote from the location of his bank, *without special authority* from the Directors.

Sandy River Bank vs. Merchants Bank, 1 Bissell, 146.
Massey vs. Eagle Bank, 9 Metc., 313.
U. S Bank vs. Dunn, 6 Peters, 59.

The term "*ordinary duties*" does not extend to contracts involving the payment of money unless it be such as has been loaned in the customary way, without express power from the Board of Directors—*U. S. vs. City Bank of Columbus*, 21 How. 356, and see the cases referred to in Thompson's National Bank cases, at p. 62.

As Justice Clifford said in his dissenting opinion in *Merchants Bank vs. State Bank*, 10 Wall., 676, "Associations organized under the Act of Congress to carry on the business of banking are required by the express words of the Act to transact *their usual business* at an office or banking house located in the place specified in their organization certificate."

In the prevailing opinion in that case (p. 651), it is said that this provision must be *construed reasonably*, but would it have been held in that case that a reasonable construction would have permitted the Cashier in that case, instead of crossing the street to a neighboring bank in Boston and there making the certification, to have gone to Chicago or San Francisco and there done the same thing, or *a fortiori*, to have given a four months note in the name of his bank for the $600,000 involved in that suit.

The conclusion seems irresistible that when Judd, as cashier, made the note in question at Chicago, it was a plain violation not only of the general rules which limit the powers of Cashiers, but of the plain letter of the National Banking Act, requiring his duties to be performed at the place where his Bank is located.

We do not deny that many ordinary and routine duties like the transfer of the Bank's negotiable securities, or acknowledging a balance of account, and pledging collaterals therefor, and the like, may be performed by a cashier when absent from his Bank, but he certainly has no power in a distant town to create a new debt for a large amount, binding his Bank, even if he were not restrained by the National Banking laws.

III.

But it will be claimed that although the Wyandotte Bank might have defended successfully the collection of the note in question as against the Cook County National Bank, yet that the same defense cannot be made when the note came to the hands of a *bona fide* endorsee for value before its maturity.

If the making of this note was not only *ultra vires*, but positively prohibited by law, then no one can claim immunity if it bore on its face the evidence that it had been issued contrary to law.

Every one proposing to purchase or discount this note was distinctly informed by its recitals that it was made in violation of the National Banking law, both as to the power to make the note at all, and the place where the assumed power was exercised.

The authorities cited on the former branches of this argument fully sustain this view.

Besides, there was a recital on the face of the note that it was accompanied by collaterals, and the fact that they had been

separated from the note should have roused suspicion and led to enquiry.

A negotiable note, to protect an innocent purchaser, it is said must be "a courier without luggage." A quantity of municipal bonds appeared on the face of this note to be the luggage which accompanied it. Enquiry about that luggage would have revealed our equities.

But it is claimed that there was a *hiatus* in the operation of thel aw prohibiting the making of post notes, growing out of the Enactment of the Revised Statutes U. S. of 1874.

The Original Act of Feb'y 25, 1863, in Section 20, contained a distinct prohibition of the issuance of post notes, and if we turn to Title 74 on page 1,091 of the R. S. of 1874, we shall see by Secs. 5595 and 5596 that it was not intended by adopting the Revision to enact new laws, but simply to re-enact old ones as they stood, after amendments and partial repeals, at the date of the Revision, and no law of a general and permanent character ceased to be a law simply because omitted in the Revision, unless it appeared that Congress intended to amend or repeal it by the Revision. Congress had never repealed the clause prohibiting the issue of post notes, and that they did not intend to do so is apparent from the Title of the Act in the Appendix to the Revision of 1874, which is "An Act to correct errors and to supply omissions in the Revised Statutes of the United States."

It was an error or omission of the Revisors, which was supplied, not any new law made, for the old one had never been changed.

IV.

But if it were possible that a *bona fide* holder of this paper might under some circumstances be protected, the N. Y. State Loan and Trust Co. and its Receiver are not entitled to make such a claim.

It seems that in 1874 the Loan and Trust Co. was the N.Y. correspondent of the Cook County National, both institutions being then in good credit, and on the 7th day of December, 1874, when it is claimed the note in controversy was discounted by the Loan and Trust Co., the Cook County bank had to its credit on the books of the Loan and Trust Co., a balance exceeding $15,000, as appears from Hubbard's testimony.

Allen, the President of the Cook County National, had taken the paper from Chicago to New York, and there made his guaranty as President on the back of it when its proceeds were placed to the credit of his bank. The note on its face showed that it was secured by collaterals, but Allen had left them in Chicago, and no enquiry was made about them or the maker of the note by the Loan and Trust Co., and the paper was evidently discounted on the guaranty of the President, and placed to credit to be drawn against as in numerous similar cases before and after Dec. 7, 1874.

Let us look at the instrument by which the Loan & Trust Co. gained their title to the paper. It purports to be a general guaranty of payment, on the part of the President of the Cook Co. National.

Was this such an endorsement as could under the laws of

New York, where it was made, vest in an innocent endorsee a title free from equities between the original parties. This was a special contract of guaranty, if anything, and could not, by striking out the guaranty, be turned into an ordinary endorsement.

L'Amoreaux vs. Hewitt, 5 Wend., 307.

While such a guaranty may have the effect, as an incident, to give the holder a title to the paper, yet the guarantor cannot be treated as a mere endorser, for if he were, he would not be holden if the paper was not protested at maturity.

McLaren vs. Watsen's Ex'rs, 26 Wend., 434.

In *Vanderveer vs. Wright*, 6 Barb., 547, where the payee of a note wrote on the back of it a general guaranty of collectibility, it was held that this was only a special contract, and did amount to an endorsement. And see also *Ellis vs. Brown*, 6 Barb., 282.

But the Loan aud Trust Co. in discounting this note, saw from its face that it was accompanied by some municipal bonds as collateral security. If any enquiry had been made about those collaterals, and the motive of Allen in separating them from the note, it would have learned that Allen and his bank had no right to negotiate the note free from equities on the part of the Wyandotte Bank.

The Loan and Trust Company was put upon enquiry by the peculiar circumstances under which it took the note and the recitals on its face.

Dorsey vs. Abrams, 85 Pa. Stat., 299.

Henneberry vs. Morse, 56 Ill., 394.

Goodman vs. Simonds, 20 How., 367.

The bare fact that the collaterals had been separated from the note, was a circumstance of suspicion, and would naturally lead to the surmise that they had been misappropriated, and at least should have led to enquiry.

But Allen's guaranty as President of payment, was made a thousand miles away from his Bank, and he neither had the power to make it in New York, or at Chicago, so as to bind his Bank, as we have already seen, and a void guaranty could not be set up by the Loan and Trust Co. as a basis for a claim of *bona fide purchase in the usual course of business.*

Besides, the Loan and Trust Co. was bound to know that Allen as President had no power, *ex officio*, to transfer, by his endorsement, the notes belonging to his Bank. That was the function of the Cashier, and no one else.

City Bank vs. Perkins, 29 N. Y., 569.

But the N. Y. State Loan and Trust Co. had no power to engage in a banking business by discounting the note in question and putting it to the credit of the Cook County Nat'l to be drawn against.

This was expressly decided in the case of *N Y State Loan and Trust Company vs. Helmer*, 12 Hun., 35, in the Supreme Court of New York and the decision was affirmed in the Court of Appeals April 15, 1879, as appears in the table of cases passed upon in the Court of Appeals, at the beginning of the 24th vol. of Hun's Sup. Ct. Reports.

In the case of *Black River Ins. Co. vs. N. Y. State Loan and Trust, Co.*, 73 N. Y., 271, the Ins. Co. brought replevin to obtain from the Loan and Trust Co. certain notes which it had

discounted, but the Court of Appeals said that no matter how imperfect the title of the defendant was, the plaintiff had shown no right to the posession.

In conclusion, then, we have the case of a note executed by a party, that had no power to make it, even at the place of business of his bank, or *a fortiori* 500 miles distant therefrom, and delivered to a party having knowledge of the facts that rendered it void, then the attempt fraudulently to defeat our equities by a transfer of the note separated from the collaterals that accompanied it, but that transfer invalid to protect an endorsee against our equity because made in an irregular form by an unauthorized party, the note itself also bearing upon its face recitals that should have led to inquiry, and finally the alleged endorsee of the note having no power to discount the same in the manner shown by the evidence, and therefore unable to maintain an action at law thereon.

It will be said that we are seeking to avoid payment of this uote by a resort to technicalities, which commercial honor forbids we shoutd urge against the N. Y. State L. & T. Co. and its receiver.

Are we not offering to stand by the grossly usurious arrangement made with the Cook County National, paying interest on four-fifths of a loan never paid over to us, and offering to pay the whole balance that that Bank or its Receiver could pretend to claim from us, while our collaterals, the municipal bonds and the interest which has accrued thereon for five years have been unjustly withheld from us.

In trying to protect ourselves from the gross fraud attempted by Allen, we see nothing in the management of the N. Y. State

L. & T. Co. as developed in the reported decisions to which we have referred, or Hubbard's testimony, that in honor forbids our asserting our plain rights and equities equally as against it, the Cook County National, and their respective receivers.

SLEEPER & WHITON,
SOL'RS OF APPELLEE.